SUPERIOR COURT RULES OF CRIMINAL PROCEDURE

Rule 1. Scope; Criminal Division Branches; Tax Division; Sections.

(a) Scope. These Rules govern the procedure in the Superior Court of the District of Columbia, Criminal Division, and in all criminal proceedings in the Superior Court of the District of Columbia, Tax Division.

(b) Criminal Division Branches. The following Branches are established in the Criminal Division:

(1) The Felony Branch. (i) Prosecutions in the name of the United States for offenses which carry a maximum punishment of imprisonment exceeding 1 year and (ii) prosecution for other offenses which are joined with such prosecutions shall be conducted in the Felony Branch.

(2) The Misdemeanor Branch. (i) Prosecutions in the name of the United States for all other offenses and (ii) prosecutions in the name of the District of Columbia which are joined with such prosecutions shall be conducted in the Misdemeanor Branch.

(3) The District of Columbia-Traffic Branch. Prosecutions in the name of the District of Columbia, except those brought pursuant to the provisions of the statutes relating to taxes levied by or in behalf of the District of Columbia, shall be conducted in the District of Columbia-Traffic Branch.

(c) Tax Division. All proceedings brought by the District of Columbia for the imposition of criminal penalties pursuant to the provisions of the statutes relating to taxes levied by or in behalf of the District of Columbia shall be conducted in the Tax Division.

(d) Sections. The Chief Judge by order may create such Sections as may be necessary for the sound administration of justice.

Rule 2. Purpose and construction.

These Rules are intended to provide for the just determination of every criminal proceeding in the Superior Court of the District of Columbia. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

Rule 3. The complaint.

The complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before a judge of the Superior Court or any employee of the Superior Court authorized by the Chief Judge to administer oaths.

Rule 4. Arrest warrant or summons upon complaint.

(a) Issuance. If it appears from the complaint, or from an affidavit filed with the complaint, that there is probable cause to believe that an offense has been committed and that the person named in the complaint has committed it, a warrant for the arrest of that person shall be issued by the Court to any officer authorized by law to execute it. Upon the request of the prosecutor a summons instead of a warrant shall issue. More than 1 warrant or summons may issue on the same complaint. If a person fails to appear in response to the summons, a warrant shall issue. Except for good cause shown by specific statements appearing in the complaint or in an affidavit filed with the complaint, no warrant shall be issued unless the complaint has been approved by an appropriate prosecutor.

(b) Probable cause. The finding of probable cause may be based upon hearsay evidence in whole or in part.

(c) Form.

(1) Warrant. An arrest warrant shall be signed by the judge and shall state or contain the name of the Court, the date of issuance of the warrant, and the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty. It shall describe the offense charged in the complaint. It shall command that the defendant be arrested and brought before the Court or other person enumerated in *18 U.S.C. § 3041*.

(2) Summons. The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the Court at a stated time and place.

(d) Execution or service; and return.

(1) By whom. The warrant shall be executed by a law enforcement officer. The summons may be served by any person authorized to serve a summons in a civil action in the Superior Court or by any officer authorized to execute an arrest warrant.

(2) Territorial and other limits. A warrant or summons for an offense punishable by imprisonment for more than 1 year may be executed or served at any place within the jurisdiction of the United States. A warrant or summons for an offense punishable by imprisonment for not more than 1 year, or by a fine only, or by such imprisonment and a fine, may be executed or served in any place in the District of Columbia, but not more than 1 year after the date of issuance.

(3) Manner. The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant at the time of the arrest but upon request shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant at the time of the arrest, the officer shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon a defendant by delivering a copy to the defendant personally, or by leaving it at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein and by mailing a copy of the summons to the defendant's last known address.

(4) Return. The officer executing a warrant shall make a return thereof to a judge of the Court before whom the defendant is brought pursuant to Rule 5 or to an officer before whom the defendant is brought pursuant to Rule 5-I. At the request of the prosecutor any unexecuted warrant shall be returned to the Court and cancelled by a judge thereof. On or before the return day the person to whom a summons was delivered for service shall make a return thereof to the Court. At the request

of the prosecutor made at any time while the complaint is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the Court to a law enforcement officer for execution or to an authorized person for service.

Rule 4-I. Use of summons when reprosecuting offense.

If a prosecution is terminated by nolle prosequi or by Court dismissal without prejudice and if the United States attorney or Corporation Counsel elects to re-institute a 2nd or subsequent prosecution against the same party arising out of the same fact situation as the charge which was nolle prossed or dismissed, the prosecuting authority shall, except for good cause shown, serve the party by summons and shall notify in writing his former counsel of the date and place formal charges will be re-instituted.

Rule 5. Initial proceedings before the Court.

(a) Appearance before the Court. An officer within the District of Columbia making an arrest under a warrant issued by the Superior Court upon a complaint, making an arrest without a warrant, or receiving a person arrested by a special policeman or other authorized person shall take the arrested person without unnecessary delay before the Court. Before taking an arrested person before the Court, an officer may perform any recording, fingerprinting, photographing, or other preliminary police duties required in the particular case, and if such duties are performed with reasonable promptness, the period of time required therefor shall not constitute delay within the meaning of this Rule. This Rule shall not be construed to conflict with or otherwise supersede section 3501 of title 18, United States Code. If a person arrested without a warrant is brought before the Court, a complaint or information shall be filed forthwith.

(b) Statement by the Court. The Court shall inform the defendant of the complaint against the defendant and of any affidavit filed therewith, of the defendant's right to retain counsel, and of the defendant's right to the assignment of counsel if the defendant is unable to obtain counsel. The Court shall also inform the defendant of the defendant's right to have a preliminary examination if a felony is charged. The Court shall inform the defendant that the defendant is not required to make a statement and that any statement made by the defendant may be used against the defendant. The Court shall allow the defendant reasonable time and opportunity to consult counsel and shall release or detain the defendant as provided by statute or in these Rules.

(c) Probable cause. If at this hearing the Court imposes any conditions of release which constitute a significant restraint on pretrial liberty upon any person who was arrested without an arrest warrant, the Court shall, unless the defendant waives an initial probable cause determination, require the prosecutor to file with the Clerk of the Criminal Division by the end of the next working day a copy of a sworn statement of fact offered to establish probable cause; except that in nonmoving traffic violation cases, the traffic citation may be considered by the Court as sufficient to establish probable cause. Upon the filing of the sworn statement of fact, the Court shall then proceed promptly to determine if there is probable cause to believe that an offense has been committed and that the defendant committed it. The determination or probable cause may be made by the Court

without conducting a hearing. The Court's finding of probable cause may be based upon hearsay evidence in whole or in part. The Court shall enter its determination as to probable cause on the case jacket along with the date of the determination. If the Court determines, based on the information offered by the prosecutor, that there is no probable cause, the Court shall release the defendant, without significant restraints on the defendant's liberty, and shall order the defendant to appear for the next Court proceeding.

(d) Preliminary examination.

(1) In general. The purpose of a preliminary examination is not for discovery. The defendant shall not be called upon to plead. If the defendant waives preliminary examination, the Court shall forthwith hold the defendant to answer in the Court having jurisdiction to try the defendant. If the defendant does not waive examination, the Court shall hear the evidence within the time limits set forth in subparagraph (2). If from the evidence it appears that there is probable cause to believe that an offense has been committed and that the defendant committed it, the Court shall forthwith hold the defendant to answer in the Court having jurisdiction to try the defendant. The finding of probable cause may be based upon hearsay evidence in whole or in part. The defendant may cross-examine adverse witnesses and may introduce evidence. Objections to evidence on the ground that it was acquired by unlawful means are not properly made at the preliminary examination. Motions to suppress must be made to the Court as provided in Rules 12 and 47 of these Rules. If from the evidence it appears that there is no probable cause to believe that an offense has been committed or that the defendant committed it, the Court shall dismiss the complaint and discharge the defendant. The discharge of the defendant shall not preclude the government from instituting a subsequent prosecution of the same offense. After concluding the proceeding the Court shall transmit forthwith to the appropriate clerk all papers in the proceeding and any security taken by it.

(2) Time limits. A preliminary examination shall be held within a reasonable time, but in any event not later than 10 days following the initial appearance if the defendant is detained and not later than 20 days if the defendant is not detained: provided however, that the preliminary examination shall not be held if the defendant is indicted or if an information against the defendant is filed before the time set for the preliminary examination. With the consent of the defendant and upon a showing of good cause, taking into account the public interest in the prompt disposition of criminal cases, time limits specified in this paragraph may be extended 1 or more time [times] by the Court. In the absence of such consent by the defendant, time limits may be extended only upon a showing that extraordinary circumstances exist and that delay is indispensable to the interest of justice.

(e) Definition of "Court". As used in this Rule, the term "Court" shall mean a Superior Court judge or magistrate judge.

Rule 5-I. Arrests outside the District of Columbia.

A person arrested outside the District of Columbia on a warrant issued by the Superior Court of the District of Columbia shall be taken before a judge, commissioner, or magistrate and shall be held to answer in the court having jurisdiction to try the defendant pursuant to the Federal Rules of Criminal Procedure as if the warrant had been issued by the United States District Court for the District of Columbia.

Rule 6. The grand jury.

(a) Summoning grand juries.

(1) Generally. The Chief Judge or an associate judge designated by the Chief Judge shall order one or more grand juries to be summoned at such times as the public interest requires. The grand jury shall consist of not less than 16 nor more than 23 members. The Chief Judge or an associate judge designated by the Chief Judge shall direct that a sufficient number of legally qualified persons be summoned to meet this requirement.

(2) Alternate jurors. The Court may direct that alternate jurors may be designated at the time a grand jury is selected. Alternate jurors in the order in which they were designated may thereafter be impanelled as provided in paragraph (g) of this rule. Alternate jurors shall be drawn in the same manner and shall have the same qualifications as the regular jurors, and if impanelled shall be subject to the same challenges, shall take the same oath and shall have the same functions, powers, facilities and privileges as the regular jurors.

(b) Objections to grand jury and to grand jurors.

(1) Challenges. The prosecutor or a defendant who has been held to answer in the Court having jurisdiction to try the offense may challenge the array of jurors on the ground that a grand jury ordered by a judge of the Superior Court was not selected, drawn or summoned in accordance with law, and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges shall be made before the administration of the oath to the jurors and shall be tried by the court having jurisdiction to try the defendant.

(2) Motion to dismiss. A motion to dismiss the indictment may be based on objections to the array or on the lack of legal qualification of an individual joror [juror], if not previously determined upon challenge. Such motion shall be made in the manner prescribed in *28 USC § 1867*(e) and shall be granted under the conditions prescribed in that statute. An indictment shall not be dismissed on the ground that 1 or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to paragraph (c) of this Rule that 12 or more jurors, after deducting the number not legally qualified, concurred in finding the indictment.

(c) Foreperson and deputy foreperson. The summoning judge, or in the summoning judge's absence or disability a judge designated by the Chief Judge, shall appoint one of the jurors to be foreperson and another to be deputy foreperson. The foreperson shall have the power to administer oaths and affirmations and shall sign all indictments. The foreperson or another juror designated by the foreperson shall keep a record of the number of jurors concurring in the finding of every indictment and shall file the record with the Clerk of the Court in which the indictment is returned, but the record shall not be made public except on order of such court. During the absence of the foreperson, the deputy foreperson shall act as foreperson.

(d) Who may be present.

(1) While grand jury is in session. Attorneys for the government prosecutors, the witness under examination, interpreters when needed and, for the purpose of taking the evidence, a stenographer or operator of a recording device may be present while a grand jury ordered by the Superior Court is in session.

(2) During deliberations and voting. No person other than the jurors, and any interpreter necessary to assist a juror who is hearing or speech impaired, may be present while the grand jury is deliberating or voting.

(e) Recording and disclosure of proceedings.

(1) Recording of proceedings. All proceedings, except when the grand jury is deliberating or voting, shall be recorded stenographically or by an electronic recording device. An unintentional failure of any recording to reproduce all or any portion of a proceeding shall not affect the validity of the prosecution. The recording or reporter's notes or any transcript prepared therefrom shall remain in the custody or control of the attorney for government unless otherwise ordered by the Court in a particular case.

(2) General rule of secrecy. A grand juror, an interpreter, a stenographer, an operator of a recording device, a typist who transcribes recorded testimony, an attorney for the government, or any person to whom disclosure is made under paragraph (3)(A)(ii) of this subdivision shall not disclose matters occurring before a grand jury ordered by the Superior Court, except as otherwise provided for in these Rules. No obligation of secrecy may be imposed on any person except in accordance with this Rule. A knowing violation of Rule 6 may be punished as a contempt of court.

(3) Exceptions. (A) Disclosure otherwise prohibited by this Rule of matters occurring before a grand jury ordered by the Superior Court, other than its deliberations and the vote of any grand juror, may be made to

(i) The attorneys for the government for use in the performance of their duties; and

(ii) Such government personnel (including personnel of a state or subdivision of a state) as are deemed necessary by an attorney for the government to assist an attorney for the government in the performance of such attorney's duty to enforce federal and District of Columbia criminal law.

(B) Any person to whom matters are disclosed under subparagraph (A)(ii) of this paragraph shall not utilize that grand jury material for any purpose other than assisting the attorney for the government in the performance of such attorney's duty to enforce federal and District of Columbia criminal law. An attorney for the government shall promptly provide the Superior Court with the names of the persons to whom such disclosure has been made and shall certify that the attorney has advised such persons of their obligation of secrecy under this Rule.

(C) Disclosure otherwise prohibited by this Rule of matters occurring before the grand jury may also be made

(i) When so directed by an order of a court within the District of Columbia preliminarily to or in connection with a judicial proceeding;

(ii) When permitted by such court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury;

(iii) When the disclosure is made by an attorney for the government to another grand jury in the District of Columbia; or

(iv) When permitted by a court at the request of an attorney for the government, upon a showing that such matters may disclose a violation of state criminal law, to an appropriate official of a state or subdivision of a state for the purpose of enforcing such law.

If the Court orders disclosure of matters occurring before the grand jury, the disclosure shall be made in such manner, at such time, and under such conditions as the Court may direct.

(D) A petition for disclosure pursuant to subparagraph (e)(3)(C)(i) shall be filed with the Clerk of the Court. Unless the hearing is ex parte, which it may be when the petitioner is the government, the petitioner shall serve written notice of the petition upon (i) the attorney for the government, (ii) the parties to the judicial proceedings if disclosure is sought in connection with such a proceeding, and (iii) such other persons as the Court may direct. The Court shall afford those persons a reasonable opportunity to appear and be heard.

(4) Sealed indictments. Such court may direct that the indictment be kept secret until the defendant is in custody or has been released pending trial. Thereupon the Clerk of the Court shall seal the indictment and no person shall disclose the return of the indictment except when necessary for the issuance and execution of a warrant or service of a summons.

(5) Closed hearing. Subject to any right to an open hearing in contempt proceedings, the Court shall order a hearing on matters affecting a grand jury proceeding to be closed to the extent necessary to prevent disclosure of matters occurring before a grand jury.

(6) Sealed records. Records, orders and subpoenas relating to grand jury proceedings shall be kept under seal to the extent and for such time as is necessary to prevent disclosure of matters occurring before a grand jury.

(f) Finding and return of indictment. A grand jury may indict only upon the concurrence of 12 or more jurors. The indictment shall be returned in open court by a grand jury ordered by the Superior Court, or through the foreperson or deputy foreperson on its behalf, to a judge of the court in which the offense is to be tried. If a complaint or information is pending against the defendant and 12 jurors do not vote to indict the foreperson shall so report to the court which has jurisdiction to try the defendant in writing as soon as possible.

(g) Discharge and excuse. A grand jury ordered by the Superior Court shall serve until discharged by the Chief Judge or other judge designated by the Chief Judge; but no grand jury may serve more than 18 months unless the Chief Judge or designee extends the service of the grand jury for a period of 6 months or less upon a determination that such extension is in the public interest. At any time for cause shown, the Chief Judge or other judge designated by the Chief Judge may excuse a juror either temporarily or permanently, and in the latter event the Chief Judge or designee may impanel another person in place of the juror excused.

Rule 7. The indictment and the information.

(a) Use of indictment or information. An offense which may be punished by death shall be prosecuted by indictment. An offense which may be punished by imprisonment for a term exceeding 1 year shall be prosecuted by indictment or, if indictment is waived, it may be prosecuted by information. Any other offense may be prosecuted by indictment or by information. An information may be filed without leave of court, but in the case of a person arrested without a warrant, the person shall be brought before the Court and charged forthwith by information or complaint or the person shall be discharged.

(b) Waiver of indictment. An offense which may be punished by imprisonment for a term exceeding 1 year may be prosecuted by information if the defendant, after having been advised of the nature of the charge and of the rights of the defendant, waives in open court prosecution by indictment.

(c) Nature and contents. The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecutor as attorney for the government. It need not contain a formal commencement, a formal conclusion or any other matter not necessary to such statement. Allegations made in 1 count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the offense are unknown or that the defendant committed it by 1 or more specified means. The indictment or information shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. Error in the citation or its omission shall not be ground for dismissal of the indictment or information or for reversal of a conviction if the error or omission did not mislead the defendant to the defendant's prejudice.

(d) Surplusage. The Court on motion of the defendant may strike surplusage from the indictment or information.

(e) Amendment of information. The Court may permit an information to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

(f) Bill of particulars. The Court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made before arraignment or within 10 days after arraignment or at such later time as the Court may permit. A bill of particulars may be amended at any time subject to such conditions as justice requires.

Rule 8. Joinder of offenses and of defendants.

(a) Joinder of offenses. Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors, or both, are of the same or similar character or are based on the same act or transaction or on 2 or more acts or transactions connected together or constituting parts of a common scheme or plan.

(b) Joinder of defendants. Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in 1 or more counts together or separately and all of the defendants need not be charged in each count.

Rule 9. Warrant or summons upon indictment or information.

(a) Issuance. Upon the request of the prosecutor the Court shall issue a warrant for each defendant named in an information supported by a showing of probable cause under oath as is required by Rule 4(a), or in an indictment. Upon the request of the prosecutor a summons instead of a warrant shall issue. If no request is made, the Court may issue either a warrant or a summons in its discretion. More than 1 warrant or summons may issue for the same defendant. The Clerk shall deliver the warrant or summons in cases arising out of violations of any of the ordinances of the District of Columbia to the Chief of Police and in all other criminal cases to the United States Marshal or to the Chief of Police. If a defendant fails to appear in response to a summons, a warrant shall issue.

(b) Form.

(1) Warrant. The form of the warrant shall be as provided in Rule 4(c)(1) except that it shall be signed by the Clerk, it shall bear teste in the name of a judge or hearing commissioner of the Court, it shall be under seal of The Court, and it shall describe the offense charged in the indictment or information. The terms of release or detention may be fixed by the Court and endorsed on the warrant.

(2) Summons. The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the Court at a stated time and place.

(c) Execution or service; and return.

(1) Execution or service. The warrant shall be executed or the summons served as provided in Rule 4(c)(1), (2), and (3) [Rule 4(d)(1)-(3)] except that in cases arising out of violations of any of the ordinances of the District of Columbia the warrant shall be executed by the Chief of Police or his authorized agent and in all other criminal cases, the warrant shall be executed by either the United States Marshal, the Chief of Police, or any of their authorized agents and except that a summons to a corporation shall be served by delivering a copy to an officer or to a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the corporation's last known address within the District of Columbia or at its principal place of business elsewhere in the United States. The officer executing the warrant shall bring the arrested person promptly before the Court.

(2) Return. The officer executing a warrant shall make return thereof to the Court. At the request of the prosecutor any unexecuted warrant shall be returned and cancelled. On or before the return day the person to whom a summons was delivered for service shall make return thereof. At the request of the prosecutor made at any time while the indictment or information is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the Clerk to an authorized person for execution or service.

Rule 10. Arraignment.

Arraignment shall be conducted in open court and shall consist of reading the indictment or information to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead thereto. The defendant shall be given a copy of the indictment or information before being called upon to plead.

Rule 11. Pleas.

(a) Alternatives.

(1) In general. A defendant may plead guilty, not guilty, or nolo contendere. If a defendant refuses to plead or if a defendant organization, as defined in *18 U.S.C. § 18,* fails to appear, the Court shall enter a plea of not guilty.

(2) Conditional pleas. With the approval of the Court and the consent of the government, a defendant may enter a plea of guilty or nolo contendere, reserving in writing the right, on appeal from the judgment, to review of the adverse determination of any specified pretrial motion. A defendant who prevails on appeal shall be allowed to withdraw the plea.

(b) Nolo contendere. A defendant may plead nolo contendere only with the consent of the Court. Such a plea shall be accepted by the Court only after due consideration of the views of the parties and the interest of the public in the effective administration of justice.

(c) Advice to defendant. Before accepting a plea of guilty or nolo contendere, the Court must address the defendant personally in open court and inform the defendant of, and determine that the defendant understands, the following:

(1) The nature of the charge to which the plea is offered, the mandatory minimum penalty provided by the law, if any, and the maximum possible penalty provided by law and, when applicable, that the Court may also order the defendant to make restitution to any victim of the offense; and

(2) If the defendant is not represented by an attorney, that the defendant has the right to be represented by an attorney at every stage of the proceeding and, if necessary, one will be appointed to represent the defendant; and

(3) That the defendant has the right to plead not guilty or to persist in that plea if it has already been made, the right to be tried by a jury and at that trial the right to the assistance of counsel, the right to confront and cross-examine adverse witnesses, and the right against compelled self-incrimination; and

(4) That if a plea of guilty or nolo contendere is accepted by the Court there will not be a further trial of any kind, so that by pleading guilty or nolo contendere the defendant waives the right to a trial; and

(5) If the Court intends to question the defendant under oath, on the record, and in the presence of counsel about the offense to which the defendant has pleaded, that the defendant's answers may later be used against the defendant in a prosecution for perjury or false statement.

(d) Insuring that the plea is voluntary. The Court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The Court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the prosecutor and the defendant or the defendant's attorney.

(e) Plea agreement procedure.

(1) In general. The prosecutor and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the prosecutor will do either or both of the following:

(A) Move for dismissal of other charges; or

(B) Recommend or agree not to oppose the defendant's request for a particular sentence or sentencing range. Any such recommendation or request is not be binding on the Court; or

(C) Agree that a specific sentence or sentencing range is the appropriate disposition of the case. Such a plea agreement is binding on the Court once it is accepted by the Court.

The Court shall not participate in any discussions between the parties concerning any such plea agreement.

(2) Notice of such agreement. If a plea agreement has been reached by the parties, the Court shall, on the record, require the disclosure of the agreement in open court or, on a showing of good cause, in camera, at the time the plea is offered. If the agreement is of the type specified in (e)(1)(A) or (C), the Court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report. In any case in which a defendant enters a guilty plea to a crime of violence involving injury to the victim, as defined in *D.C. Code § 23-103a(a)(2)* and (3), the Court shall defer that decision until the conditions of Rule 32(a) are met. If the agreement is of the type specified in subparagraph (e)(1)(B), the Court shall advise the defendant that if the Court does not accept the recommendation or request, the defendant nevertheless has no right to withdraw the plea.

(3) Acceptance of a plea agreement. If the Court accepts the plea agreement, the Court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

(4) Rejection of a plea agreement. If the Court rejects the plea agreement, the Court shall, on the record, inform the parties of this fact and advise the defendant personally in open court or, on a showing of good cause, in camera, that the Court is not bound by the plea agreement. Thereupon, neither party shall be bound by the plea agreement. The Court shall afford the defendant the opportunity to then withdraw the plea, and advise the defendant that if the defendant persists in a guilty plea or plea of nolo contendere the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

(5) Time of plea agreement procedure. Except for good cause shown, notification to the Court of the existence of a plea agreement shall be given at the arraignment or at such other time, prior to trial, as may be fixed by the Court.

(6) Inadmissibility of pleas, plea discussions, and related statements. Except as otherwise provided in this paragraph, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

(A) A plea of guilty which was later withdrawn;

(B) A plea of nolo contendere;

(C) Any statement made in the course of any proceedings under this Rule regarding either of the foregoing pleas; or

(D) Any statement made in the course of plea discussions with a prosecutor which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussion has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.

(f) Determining accuracy of plea. Notwithstanding the acceptance of a plea of guilty, the Court should not enter a judgment upon such plea without making such inquiry as shall satisfy it that there is a factual basis for the plea.

(g) Record of proceedings. A verbatim record of the proceedings at which the defendant enters a plea shall be made and, if there is a plea of guilty or nolo contendere, the record shall include, without limitation, the Court's advice to the defendant, the inquiry into the voluntariness of the plea including any plea agreement, and the inquiry into the accuracy of a guilty plea.

(h) Harmless error. Any variance from the procedures required by this Rule which does not affect substantial rights shall be disregarded.

(i) Definition of "Court". As used in this Rule, the term "Court" shall mean a Superior Court judge or hearing commissioner.

Rule 12. Pleadings and motions before trial; defenses and objections.

(a) Pleadings and motions. Pleadings in criminal proceedings shall be the indictment and the information, and the pleas of not guilty, guilty and nolo contendere. All other pleas, and demurrers and motions to quash are abolished, and defenses and objections raised before trial which heretofore could have been raised by 1 or more of them shall be raised only by motion to dismiss or to grant appropriate relief, as provided in these Rules.

(b) Pretrial motions. Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion and in accordance with Rule 47-I. The following must be raised prior to trial:

(1) Defenses and objections based on defects in the institution of the prosecution; or

(2) Defenses and objections based on defects in the indictment or information (other than that it fails to show jurisdiction in the Court or to charge an offense which objections shall be noticed by the Court at any time during the pendency of the proceedings); or

(3) Motions to suppress evidence; or

(4) Requests for discovery under Rule 16; or

(5) Requests for a severance of charges or defendants under Rule 14.

(c) Notice by the government of the intention to use evidence.

(1) At the discretion of the government. At the arraignment or as soon thereafter as is practicable, the government may give notice to the defendant of its intention to use specified evidence at trial in order to afford the defendant an opportunity to raise objections to such evidence prior to trial under subdivision (b)(3) of this Rule.

(2) At the request of the defendant. At the arraignment or as soon thereafter as is practicable the defendant may, in order to afford an opportunity to move to suppress evidence under subdivision (b)(3) of this Rule, request notice of the government's intention to use (in its evidence in chief at trial) any evidence which the defendant may be entitled to discover under Rule 16 subject to any relevant limitations prescribed in Rule 16.

(d) Effect of failure to raise defenses or objections. Failure by a party to raise defenses or objections or to make requests which must be made prior to trial, at the time required by Rule 47-I or prior to any extension thereof made by the Court, shall constitute waiver thereof, but the Court for cause shown may grant relief from the waiver.

(e) Production of statements at suppression hearing. SCR Criminal 26.2 applies at a hearing on a motion to suppress evidence under subparagraph (b)(3) of this Rule. If the defendant has called a law enforcement officer as a witness, both the government and the defendant are required to produce statements of the officer in their possession under the terms of SCR Criminal 26.2.

Rule 12.1. Notice of alibi.

(a) Notice by defendant. Upon written demand of the prosecutor stating the time, date, and place at which the alleged offense was committed, the defendant shall serve within 10 days, or at such different time as the Court may direct, upon the prosecutor a written notice of the defendant's intention to offer a defense of alibi. Such notice by the defendant shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witness [witnesses] upon whom the defendant intends to rely to establish such alibi.

(b) Disclosure of information and witness. Within 10 days thereafter, but in no event less than 10 days before trial, unless the Court otherwise directs, the prosecutor shall serve upon the defendant or the defendant's attorney a written notice stating the names and addresses of the witnesses upon whom the government intends to rely to establish the defendant's presence at the scene of the alleged offense and any other witnesses to be relied on to rebut testimony of any of the defendant's alibi witnesses.

(c) Continuing duty to disclose. If prior to or during trial, a party learns of an additional witness whose identity, if known, should have been included in the information furnished under paragraph (a) or (b), the party shall promptly notify the other party or the other party's attorney of the existence and identity of such additional witness.

(d) Failure to comply. Upon the failure of either party to comply with the requirements of this Rule, the Court may exclude the testimony of any undisclosed witness offered by such party as to

the defendant's absence from or presence at, the scene of the alleged offense. This Rule shall not limit the right of the defendant to testify.

(e) Exceptions. For good cause shown, the Court may grant an exception to any of the requirements of paragraphs (a) through (d) of this Rule.

(f) Inadmissibility of withdrawn alibi. Evidence of an intention to rely upon an alibi defense, later withdrawn, or of statements made in connection with such intention, is not, in any civil or criminal proceeding, admissible against the person who gave notice of the intention.

Rule 12.2. Notice of insanity defense or expert testimony of defendant's mental condition.

(a) Defense of insanity. Insanity shall not be raised as a defense unless the defendant has complied with the notice provisions of *D.C. Code 1973, § 24-301(j)* [*§ 24-501(j)*, 2001 Ed.].

(b) Expert testimony of defendant's mental condition. If a defendant intends to introduce expert testimony relating to a mental disease or defect or any other mental condition of the defendant bearing upon the issue of the defendant's guilt, the defendant shall, within the time provided for the filing of pretrial motions or at such later time as the Court may direct, notify the attorney for the government in writing of such intention and file a copy of such notice with the clerk. The Court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

(c) Mental examination of defendant. In an appropriate case the Court may, upon motion of the prosecutor or upon its own initiative, order the defendant to submit to 1 or more mental examinations by a psychiatrist or other expert designated for this purpose in the order of the Court. No statement made by the defendant in the course of any examination provided for by this Rule, whether the examination be with or without the consent of the defendant, no testimony by the expert based upon such statement, and no other fruits of the statement shall be admitted in evidence against the defendant in any criminal proceeding except on an issue respecting mental condition on which the defendant has introduced testimony.

(d) Failure to comply. If there is a failure to give notice when required by paragraph (b) of this Rule or to submit to an examination when ordered under paragraph (c) of this Rule, the Court may exclude the testimony of any expert witness offered by the defendant on the issue of the defendant's mental condition.

(e) Inadmissibility of withdrawn intention. Evidence of an intention as to which notice was given under paragraphs (a) or (b), later withdrawn, is not, in any civil or criminal proceeding, admissible against the person who gave notice of the intention.

Rule 13. Trial together of indictments or informations.

The Court may order 2 or more indictments or informations or both to be tried together if the offenses, and the defendants if there is more than 1, could have been joined in a single indictment or

information. The procedure shall be the same as if the prosecution were under such single indictment or information. If 2 or more defendants charged in separate informations are alleged to have participated in the same act or transaction or in the same series of acts and transactions constituting an offense or offenses, the informations, if filed the same day, shall, unless otherwise ordered by the Court, be treated as joined for purpose of trial. In that event, each such information shall indicate the other information or informations with which it is joined for purpose of trial.

Rule 14. Relief from prejudicial joinder.

If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the Court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance the Court may order the prosecutor to deliver to the Court for inspection in camera any statements or confessions made by the defendants which the government intends to introduce in evidence at the trial.

Rule 15. Depositions.

(a) When taken. Whenever due to exceptional circumstances of the case it is in the interest of justice that the testimony of a prospective witness of a party to be taken and preserved for use at trial, the Court may upon motion of such party and notice to the parties order that testimony of such witness be taken by deposition and that any designated books, papers, documents, record, recording, or other material not privileged, be produced at the same time and place. If a witness is detained for inability to comply with any condition of release imposed to assure the witness's appearance to testify at a trial or hearing, the Court on written motion of the witness and upon notice to the parties may direct that the witness's deposition be taken within a reasonable period of time. After the deposition has been subscribed the Court may discharge the witness.

(b) Notice of taking. The party at whose instance a deposition is to be taken shall give to every other party written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, or upon motion of the person to be examined, the Court for cause shown may extend or shorten the time or change the place for taking the deposition. The officer having custody of a defendant shall be notified of the time and place set for the examination and shall, unless the defendant waives in writing the right to be present, produce the defendant at the examination and keep the defendant in the presence of the witness during the examination, unless, after being warned by the Court that disruptive conduct will cause the defendant's removal from the place of the taking of the deposition, the defendant persists in conduct which is such as to justify exclusion from that place. A defendant not in custody shall have the right to be present at the examination upon request subject to such terms as may be fixed by the Court, but a failure, absent good cause shown, to appear after notice and tender of expenses in accordance with subdivision (c) of this Rule shall consti-

tute a waiver of that right and of any objection to the taking and use of the deposition based upon that right.

(c) Payment of expenses. Whenever a deposition is taken at the instance of the government, or whenever a deposition is taken at the instance of a defendant who is unable to bear the expenses of the taking of the deposition the Court may direct that the expenses of travel and subsistence of the defendant and the defendant's attorney for attendance at the examination and the cost of the transcript of the deposition shall be paid by the government.

(d) How taken.

(1) Generally. Subject to such additional conditions as the Court shall provide, the deposition shall be taken and filed in the manner provided in civil actions except as otherwise provided in these Rules, provided that (1) in no event shall a deposition be taken of a party defendant without that defendant's consent, and (2) the scope and manner of examination and cross-examination shall be such as would be allowed in the trial itself. When the examination is on written interrogatories, at or before the time fixed in the notice, any other party may file cross interrogatories. Any subsequent interrogatories may be filed with leave of court. If a party fails to file written interrogatories or fails to attend an oral examination, the person before whom the deposition is taken shall propound the interrogatories listed in *D.C. Code § 23-108* (1981).

(2) Depositions at the instance of the government. When a deposition is taken at the instance of the government, the government shall make available to the defendant or the defendant's counsel for examination and use at the taking of the deposition any statement of the witness being deposed which is in the possession of the government and to which the defendant would be entitled at the trial.

(3) Depositions at the instance of the defense. When a witness is being deposed at the instance of the defendant, the defendant or the defendant's counsel shall likewise make available to the government for examination and use at the deposition any statement of the witness being deposed in the possession of the defendant which relates to the subject matter to which the witness has testified, in the same manner as provided for depositions at the instance of the government. The term "statement" as used in this sub-paragraph means a written statement made by the witness and signed or otherwise adopted or approved by the witness, or a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness to the defendant, the defendant's counsel or agent and recorded contemporaneously with the making of such oral statement. If the defendant elects not to comply with an order of the Court to deliver such a statement, or portions thereof, to the government as the Court may direct, the Court shall strike from the record the testimony of the witness.

(e) Use.

(1) At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if the witness is unavailable. "Unavailability as a witness" includes situations in which the declarant:

(A) Is exempted by ruling of the Court on the ground of privilege from testifying concerning the subject matter of that witness's statement; or

(B) Persists in refusing to testify concerning the subject matter of that witness's statement despite an order of the Court to do so; or

(C) Testifies to a lack of memory of the subject matter of that witness's statement; or

(D) Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(E) Is absent from the hearing and the proponent of that witness's statement has been unable to procure that witness's attendance by process or other reasonable means.

A declarant is not unavailable as a witness if the declarant's exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of the declarant's statement for the purpose of preventing the witness from attending or testifying.

(2) At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if the witness gives testimony at the trial or hearing inconsistent with that witness's deposition. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require the offering all of it which is relevant to the part offered and any party may offer other parts.

(f) Objections to deposition testimony. Objections to deposition testimony or evidence or parts thereof and the grounds for the objection shall be stated at the time of the taking of the deposition.

(g) Deposition by agreement not precluded. Nothing in this Rule shall preclude the taking of a deposition, orally or upon written questions, or the use of a deposition, by agreement of the parties with the consent of the Court.

Rule 16. Discovery and inspection.

(a) Governmental disclosure of evidence.

(1) Information subject to disclosure.

(A) Statement of defendant. Upon request of a defendant the attorney for the government must disclose to the defendant and make available for inspection, copying, or photographing: any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government; that portion of any written record containing the substance of any relevant oral statement made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a government agent; and recorded testimony of the defendant before a grand jury which relates to the offense charged. The government must also disclose to the defendant the substance of any other relevant oral statement made by the defendant whether before or after arrest in response to interrogation by any person then known by the defendant to be a government agent if the government intends to use that statement at trial. Upon request of a defendant which is an organization such as a corporation, partnership, association or labor union, the government must disclose to the defendant any of the foregoing statements made by a person who the government contends (1) was, at the time of making the statement, so situated as a director, officer, employee, or agent as to have been able legally to bind the defendant in respect to the subject of the statement, or (2) was, at the time of the offense, personally involved in the alleged conduct constituting the offense and so situated as a di-

rector, officer, employee, or agent as to have been able legally to bind the defendant in respect to that alleged conduct in which the person was involved.

(B) Defendant's prior record. Upon request of the defendant, the government shall furnish to the defendant such copy of the defendant's prior criminal record, if any, as is within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the prosecutor.

(C) Documents and tangible objects. Upon request of the defendant the prosecutor shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the government, and which are material to the preparation of the defendant's defense, or are intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant.

(D) Reports of examinations and tests. Upon request of a defendant the prosecutor shall permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the prosecutor, and which are material to the preparation of the defense or are intended for use by the government as evidence in chief at the trial.

(E) Expert witness. At the defendant's request, the government shall disclose to the defendant a written summary of the testimony of any expert witness that the government intends to use during its case-in-chief at trial. If the government requests discovery under subdivision (b)(1)(C)(ii) of this Rule and the defendant complies, the government shall, at the defendant's request, disclose to the defendant a written summary of testimony of any expert witness the government intends to use as evidence at trial on the issue of the defendant's mental condition. The summary provided under this subparagraph shall describe the witnesses' opinions, the bases and the reasons for those opinions, and the witnesses' qualifications.

(2) Information not subject to disclosure. Except as provided in subparagraphs (a)(1)(A), (B), (D), and (E), this Rule does not authorize the discovery or inspection of reports, memoranda, or other internal government documents made by the attorney for the government or any other government agent investigating or prosecuting the case. Nor does the rule authorize the discovery or inspection of statements made by witnesses or prospective government witnesses except as provided in *18 U.S.C. § 3500*.

(3) Grand jury transcripts. Except as provided in Rules 6, 12(e) and 26.2, and subparagraph (a)(1)(A) of this Rule, these Rules do not relate to discovery or inspection of recorded proceedings of a grand jury.

(b) The defendant's disclosure of evidence.

(1) Information subject to disclosure.

(A) Documents and tangible objects. If the defendant requests disclosure under paragraph (a)(1)(C) or (D) of this Rule, upon compliance with such request by the government, the defendant, on request of the government, shall permit the government to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are

within the possession, custody or control of the defendant and which the defendant intends to introduce as evidence in chief at the trial.

(B) Reports of examinations and tests. If the defendant requests disclosure under paragraph (a)(1)(C) or (D) of this Rule, upon compliance with such request by the government, the defendant, on request of the government, shall permit the government to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to that witness's testimony.

(C) Expert witnesses. Under the following circumstances, the defendant shall, at the government's request, disclose to the government a written summary of testimony of any expert witness that the defendant intends to use as evidence at trial: (i) if the defendant requests disclosure under subparagraph (a)(1)(E) of this Rule and the government complies, or (ii) if the defendant has given notice under Rule 12.2 (b) of an intent to present expert testimony on the defendant's mental condition. This summary shall describe the witnesses' opinions, the bases and reasons for those opinions, and the witnesses' qualifications.

(2) Information not subject to disclosure. Except as to scientific or medical reports, this paragraph does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant, or the defendant's attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by government or defense witnesses, or by prospective government or defense witnesses, to the defendant, the defendant's agents or attorneys.

(c) Continuing duty to disclose. If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this Rule, such party shall promptly notify the other party or that other party's attorney or the Court of the existence of the additional evidence or material.

(d) Regulation of discovery.

(1) Protective and modifying orders. Upon a sufficient showing the Court may at any time order that the discovery or inspection be denied, restricted or deferred, or make such other order as is appropriate. Upon motion by a party, the Court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. If the Court enters an order granting relief following such an ex parte showing, the entire text of the party's statement shall be sealed and preserved in the records of the Court to be made available to the appellate court in the event of an appeal.

(2) Failure to comply with a request. If at any time during the course of the proceedings it is brought to the attention of the Court that a party has failed to comply with this Rule, the Court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other orders as it deems just under the circumstances. The Court may specify the time, place and manner of making the discovery and inspection and may prescribe such terms and conditions as are just.

(e) Alibi witness. Discovery of alibi witnesses is governed by Rule 12.1 of the Criminal Rules of this Court.

(f) In the case of a defendant who is detained pursuant to *D.C. Code §§ 23-1322(b)* or *23-1329(b)*, a request for discovery under this rule may be made after thirty days following the initial order of detention or at any time after the detention hearing pursuant to *D.C. Code § 23-1322(d)*, whichever is later.

Rule 16-I. [Deleted].

Rule 16-II. Informal discovery.

It shall be the duty of every defense counsel, whether appointed or retained, to consult with the prosecutor assigned to the case in order to seek informal discovery. Such consultation shall take place prior to the time for the filing of pretrial motions as required in Criminal Rule 47-I(c). The Clerk shall not accept motions for bills of particulars and for discovery under Rule 7(f) and 16 respectively of these Rules unless defense counsel certifies in writing that he has made a bona fide attempt to secure the necessary relief from the prosecutor on a voluntary basis and that the prosecutor has not complied with such request.

Rule 17. Subpoena.

(a) For attendance of witnesses; form; issuance. A subpoena shall be issued by the Clerk under the seal of the Court. It shall state the name of the Court and the title, if any, of the proceeding, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The Clerk shall issue a subpoena signed and sealed but otherwise in blank to a party requesting it, who shall fill in the blanks before it is served.

(b) Defendants unable to pay.

(1) For defendants represented either by counsel appointed under the District of Columbia Criminal Justice Act, by staff attorneys of the Public Defender Service, or by law students admitted to the limited practice of law under Rule 44-I of Criminal Rules of this Court, an application may be made to the Clerk for witness subpoenas where the witness involved will be served within 25 miles of the place of the hearing or trial specified in the subpoena. The Clerk shall issue such subpoenas to said defense counsel in blank, signed and sealed and designated in forma pauperis, but not otherwise filled in. No subpoena so issued in blank may be served outside a radius of 25 miles from the place of the hearing or trial specified in the subpoena. The filling in by such defense counsel of a subpoena issued in blank shall constitute a certificate by said defense counsel that, in the defense counsel's opinion, the presence of the witness is necessary to an adequate defense. In the case of a defendant represented by a law student, the application shall be signed by the law student's supervising lawyer. Where the witness to be subpoenaed will be served outside a radius of 25 miles from the place of the hearing or trial specified in the subpoena, an application for the issuance of such

subpoena shall be made to the judge to whom the case is assigned and shall follow the procedure required by subsection (b)(2) of this Rule.

(2) For defendants represented by counsel other than those counsel listed in subsection (b)(1) of this Rule, the Court shall order at any time that a subpoena be issued for service on a named witness upon an ex parte application of a defendant upon a satisfactory showing that the defendant is financially unable to pay the fees of the witness and that the presence of the witness is necessary to an adequate defense.

(3) If the Court orders the subpoena to be issued pursuant to subsection (b)(2) of this Rule or if the Clerk issues a subpoena pursuant to subsection (b)(1) of this Rule, the cost incurred by the process and the fees of the witness so subpoenaed shall be paid in the same manner in which similar costs and fees are paid in case of a witness subpoenaed in behalf of the prosecuting authority.

(c) For production of documentary evidence and of objects. A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The Court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The Court may direct that books, papers, documents or objects designated in the subpoena be produced before the Court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.

(d) Service. A subpoena may be served by the Marshal, by a deputy marshall or by any other person who is not a party and who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named and by tendering to that person the fee for 1 day's attendance and the mileage allowed by law. Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the prosecuting authority or in behalf of defendants unable to pay.

(e) Place of service.

(1) In general. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the District of Columbia or at any place outside the District of Columbia that is within 25 miles of the place of the hearing or trial specified in the subpoena.

(2) Exception. A subpoena directed to a witness in a case in which a felony is charged may be served at any place within the United States upon order of a judge of the Court.

(f) For taking deposition; place of examination.

(1) Issuance. A commission to take a deposition authorizes the issuance by the Clerk of the Superior Court of subpoenas for the persons named or described therein.

(2) Place. The witness whose deposition is to be taken may be required by subpoena to attend at any place designated by the trial court, taking into account the convenience of the witness and the parties.

(g) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the Court.

(h) Information not subject to subpoena. Statements made by witnesses or prospective witnesses may not be subpoenaed from the government or the defendant under this Rule, but shall be subject to production only in accordance with the provisions of Rule 26.2.

Rule 17.1. Pretrial conference.

At any time after the filing of the indictment or information the Court upon motion of any party or upon its own motion may order 1 or more conferences to consider such matters as will promote a fair and expeditious trial. At the conclusion of a conference the Court shall prepare and file a memorandum of the matters agreed upon. No admissions made by the defendant or the defendant's attorney at the conference shall be used against the defendant unless the admissions are reduced to writing and signed by the defendant and the defendant's attorney. This Rule shall not be invoked in the case of a defendant who is not represented by counsel.

Rule 18. [Deleted].

Rule 19. [Deleted].

Rule 20. Transfer from the District of Columbia for plea and sentence.

(a) Indictment or information pending. When an indictment or information is pending in the Superior Court against a defendant who has been arrested, or is being held, or is present in another district, such defendant may state in writing a wish to plead guilty or nolo contendere, to waive trial in the District of Columbia and to consent to disposition of the case in the district in which that defendant was arrested, held, or present, subject to the approval of the United States Atrorney [Attorney] for each district. Upon receipt of defendant's statement and of the written approval of the United States attorneys, the Clerk of the Superior Court shall transmit the papers in the proceeding or certified copies thereof to the Clerk of the Court for the district in which the defendant is arrested, held, or present, and the prosecution shall continue in that district.

(b) Indictment or information not pending. A defendant arrested, held, or present in a district other than the District of Columbia, in which a complaint is pending against that defendant, may state in writing a wish to plead guilty or nolo contendere, to waive venue and trial in the District of Columbia and to consent to disposition of the case in the district in which that defendant was arrested, held, or present, subject to the approval of the United States Attorney for each district. Upon filing the written waiver of venue in the district in which the defendant is present, the prosecution may proceed as if venue were in such district.

(c) Effect of not guilty plea. If after the proceeding has been transferred pursuant to paragraph (a) or (b) of this Rule the defendant pleads not guilty, the Clerk shall return the papers to the Superior Court and the proceeding shall be restored to the docket of the Court. The defendant's statement that the defendant wishes to plead guilty or nolo contendere shall not be used against the defendant.

(d) [Deleted].

Rule 21. [Deleted].

Rule 22. [Deleted].

Rule 23. Trial by jury or by the Court.

(a) Trial by jury. Cases required to be tried by jury shall be so tried unless the defendant in open court orally and in writing waives a jury trial with the approval of the Court and the consent of the prosecuting officer.

(b) Jury of less than twelve. Juries shall be of twelve (12) but at any time before verdict the parties may stipulate in writing with the approval of the Court that the jury shall consist of any number less than twelve (12) or that a valid verdict may be returned by a jury of less than twelve (12) should the Court find it necessary to excuse one or more jurors for any just cause after trial commences. Even absent such agreement, if, due to extraordinary circumstances, the Court finds it necessary to excuse a juror for just cause after the jury has retired to consider its verdict, in the discretion of the Court, a valid verdict may be returned by the remaining eleven (11) jurors.

(c) Trial without a jury. In a case tried without a jury the Court shall make a general finding and shall in addition, on request made before the general finding, find the facts specially. Such findings may be oral. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

Rule 24. Trial jurors.

(a) Examination. The Court may permit the defendant or the defendant's attorney and the prosecutor to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event the Court shall permit the defendant or the defendant's attorney and the prosecutor to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions by the parties or their attorneys as it deems proper.

(b) Peremptory challenges. All peremptory challenges shall be made at the bench. If the offense charged is punishable by death, each side is entitled to 20 peremptory challenges. If the offense charged is punishable by imprisonment for more than 1 year, each side is entitled to 10 peremptory challenges. If the offense charged is punishable by imprisonment for not more than 1 year or by fine or both, each side is entitled to 3 peremptory challenges. If there is more than 1 defendant, or if a case is prosecuted both by the United States and the District of Columbia, the Court may allow additional peremptory challenges and permit them to be exercised separately or jointly, but in no event shall 1 side be entitled to more peremptory challenges than the other. The prosecution shall be called upon to make the 1st peremptory challenge with each side proceeding in turn thereafter.

(c) Alternate jurors.

(1) In general. The Court may empanel no more than 6 jurors in addition to the regular jury to sit as alternate jurors. An alternate juror, in the order called, shall replace a juror who, becomes or is found to be unable or disqualified to perform juror duties. Alternate jurors shall (i) be drawn in the same manner, (ii) have the same qualifications, (iii) be subject to the same examination and challenges, and (iv) take the same oath as regular jurors. An alternate juror has the same functions, powers, facilities and privileges a regular jurors.

(2) Peremptory challenges. In addition to challenges otherwise provided by law, each side is entitled to 1 additional peremptory challenge if 1 or 2 alternate jurors are empaneled, 2 additional peremptory challenges if 3 or 4 alternate jurors are empaneled, and 3 additional peremptory challenges if 5 or 6 alternate jurors are empaneled. The additional peremptory challenges may be used to remove an alternate juror only, and the other peremptory challenges allowed by these Rules may not be used to remove an alternate juror.

(3) Retention of alternate jurors. When the jury retires to consider the verdict, the Court in its discretion may retain the alternate jurors during deliberations. If the Court decides to retain the alternate jurors, it shall ensure that they do not discuss the case with any other person unless and until they replace a regular juror during deliberations. If an alternate replaces a juror after deliberations have begun, the Court shall instruct the jury to begin its deliberations anew.

Rule 25. Judge; disability.

(a) During trial. If by reason of death, sickness or other disability the judge before whom a jury trial has commenced is unable to proceed with the trial, any other judge regularly sitting in or assigned to the Court, upon certifying familiarity with the record of the trial, may proceed with and finish the trial.

(b) After verdict or finding of guilt. If by reason of absence, death, sickness or other disability the judge before whom the defendant has been tried is unable to perform the duties to be performed by the Court after a verdict or finding of guilt, any other judge regularly sitting in or assigned to the Court may perform those duties; but if that judge is satisfied that a judge who did not preside at the trial cannot perform those duties or that it is appropriate for any other reason, that judge may grant a new trial or refer the case back to the Chief Judge.

Rule 26. Evidence.

In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by an act of Congress or by these Rules. The admissibility of evidence and the competency and privileges of witnesses shall be governed, except when an act of Congress or these Rules otherwise provide, by the principles of the common law as they may be interpreted by the courts in the light of reason and experience.

Rule 26.1. Determination of foreign law.

A party who intends to raise an issue concerning the law of a foreign country shall give reasonable written notice. The Court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Rule 26. The Court's determination shall be treated as a ruling on a question of law.

Rule 26.2. Production of witness statements.

(a) Motion for production. After a witness other than the defendant has testified on direct examination, the Court, on motion of a party who did not call the witness, shall order the prosecutor or the defendant and the defendant's attorney, as the case may be, to produce, for the examination and use of the moving party, any statement of the witness that is in their possession and that relates to the subject matter concerning which the witness has testified.

(b) Production of entire statement. If the entire contents of the statement relate to the subject matter concerning which the witness has testified, the Court shall order that the statement be delivered to the moving party.

(c) Production of excised statement. If the other party claims that the statement contains privileged information or matter that does not relate to the subject matter concerning which the witness has testified, the Court shall order that it be delivered to the Court in camera. Upon inspection, the Court shall excise the portions of the statement that are privileged or that do not relate to the subject matter concerning which the witness has testified, and shall order that the statement, with such material excised, be delivered to the moving party. Any portion of the statement that is withheld from the defendant over the defendant's objection must be preserved by the prosecutor, and, if the defendant appeals a conviction, must be made available to the appellate court for the purpose of determining the correctness of the decision to excise the portion of the statement.

(d) Recess for examination of statement. Upon delivery of the statement to the moving party, the Court, upon application of that party, may recess the proceedings so that counsel may examine the statement and prepare to use it in the proceedings.

(e) Sanction for failure to produce statement. If the other party elects not to comply with an order to deliver a statement to the moving party, the Court shall order that the testimony of the witness be stricken from the record and that the trial proceed, or, if it is the prosecutor who elects not to comply, shall declare a mistrial if required by the interest of justice.

(f) Definition. As used in this Rule, a "statement" of a witness means:

(1) A written statement made by the witness that is signed or otherwise adopted or approved by the witness;

(2) A substantially verbatim recital of an oral statement made by the witness that is recorded contemporaneously with the making of the oral statement and that is contained in a stenographic, mechanical, electrical, or other recording or a transcription thereof; or

(3) A statement, however taken or recorded, or a transcription thereof, made by the witness to a grand jury.

(g) Scope of rule. This rule applies at a suppression hearing conducted under SCR-Criminal 12, at trial under this rule, and to the extent specified:

(1) in SCR-Criminal 32(g) at sentencing;

(2) in SCR-Criminal 32.1(c) at a hearing to revoke or modify probation; and

(3) in SCR-Criminal 46(f) at a detention hearing.

Rule 26.3. Mistrial.

Before ordering a mistrial, the Court shall provide an opportunity for the government and for each defendant to comment on the propriety of the order, including whether each party consents or objects to a mistrial, and to suggest any alternatives.

Rule 27. Proof of official record.

(a) Authentication.

(1) Domestic. An official record kept within the United States, or any state, district, commonwealth, territory, or insular possession thereof, or within the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by the officer's deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of the officer's office.

(2) Foreign. A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the Court may, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification.

(b) Lack of record. A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in paragraph (a)(1) of this Rule in the case of a domestic record, or complying with the requirements of paragraph (a)(2) of this Rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) Other proof. This Rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

Rule 28. Expert witnesses and interpreters.

(a) Expert witnesses. The Court may order the defendant or the government or both to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The Court may appoint any expert witnesses agreed upon by the parties, and may appoint witnesses of its own selection. An expert witness shall not be appointed by the Court unless the witness consents to act. A witness so appointed shall be informed of the witness's duties by the Court in writing, a copy of which shall be filed with the Clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness's findings, if any, and may thereafter be called to testify by the Court or by any party. The witness shall be subject to cross-examination by each party. The Court may determine the reasonable compensation of such a witness and direct its payment out of such funds as may be provided by law. The parties also may call expert witnesses of their own selection.

(b) Interpreters. The Court may appoint an interpreter of its own selection and may fix the reasonable compensation of such interpreter. Such compensation shall be paid out of funds provided by law or by the government, as the Court may direct.

Rule 29. Motion for judgment of acquittal.

(a) Motion before submission to jury. The Court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of 1 or more offenses charged in the indictment or information after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at the close of the evidence offered by the government is not granted, the defendant may offer evidence without having reserved the right.

(b) Reservation of decision on motion. The Court may reserve decision on a motion for judgment of acquittal, proceed with the trial (where the motion is made before the close of all the evidence), submit the case to the jury and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict. If the Court reserves decision, it must decide the motion on the basis of the evidence at the time the ruling was reserved.

(c) Motion after discharge of jury. If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within 7 days after the jury is discharged or within such further time as the Court may fix during the 7-day period. If a verdict of guilty is returned the Court may on such motion set aside the verdict and enter judgment of acquittal. If no verdict is returned the Court may enter judgment of acquittal. It shall not be necessary to the making of such a motion that a similar motion has been made prior to the submission of the case to the jury.

Rule 29.1. Closing argument.

After the closing of evidence the prosecution shall open the argument. The defense shall be permitted to reply. The prosecution shall then be permitted to reply in rebuttal.

Rule 30. Instructions.

At the close of the evidence or at such earlier time during the trial as the Court reasonably directs, any party may file written requests that the Court instruct the jury on the law as set forth in the requests. At the same time, copies of such requests shall be furnished to all parties. The Court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury. The Court may instruct the jury before or after the arguments are completed or at both times. No party may assign as error any portion of the charge or omission therefrom unless that party objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which that party objects and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing of the jury and, on request of any party, out of the presence of the jury.

Rule 31. Verdict.

(a) Return. The verdict shall be unanimous. It shall be returned by the jury to the judge in open court.

(b) Several defendants. If there are 2 or more defendants or if there are 2 or more counts, the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed or with respect to a count or counts as to which it has agreed; if the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree or the count or counts as to which it does not agree may be tried again.

(c) Conviction of a lesser included offense. The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

(d) Poll of jury. After a verdict is returned but before the jury is discharged, the Court shall, on a party's request, or may on its own motion, poll the jurors individually. If the poll reveals a lack of

unanimity, the Court may direct the jury to deliberate further or may declare a mistrial and discharge the jury.

Rule 32. Sentence and judgment.

(a) Time of sentence.

(1) Upon a finding of guilty by plea or verdict except where a defendant has been found guilty of a crime of violence involving injury to the victim, as defined in *D.C. Code § 23-103a(a)(2)* and (3), the Court may sentence the defendant immediately or continue the sentencing to a further date. Where a defendant has been found guilty of a crime of violence, the victim, or a representative of the immediate family of the victim if the victim has died, shall be given a reasonable time prior to imposition of sentence to file a victim impact statement with the Court as prescribed in *D.C. Code § 23-103a(b)*.

(2) In any case in which a defendant has been found guilty of a crime of violence involving injury to the victim, as defined in *D.C. Code § 23-103a(a)(2)* and (3), the United States Attorney's Office shall provide the Social Services Division with the name and address of the victim or the representative of the immediate family of a deceased victim. The Social Services Division shall notify the victim or the representative of the immediate family of a deceased victim of the right to file a victim impact statement. The notification may be made by first class mail, postage prepaid, and shall contain clear and concise instructions regarding the preparation of the impact statement and the name and address of the representative of the Social Services Division to whom the statement should be sent. The notification shall allow the victim or representative of the immediate family of a deceased victim a reasonable time to respond prior to imposition of sentence.

(3) In any case in which a defendant is to be sentenced for a crime of violence involving injury to the victim, as defined in *D.C. Code § 23-103a(a)(2)* and (3), the presentence report shall include a notice of compliance with subsection (a)(2) of this Rule. If the requirements of subsection (a)(2) have been met, the Court may impose sentence without a victim impact statement. If for any reason the requirements of subsection (a)(2) have not been met, the Court shall continue imposition of sentence for a time sufficient to permit compliance and the filing of a victim impact statement. If the victim of a crime of violence or the representative of the immediate family of a deceased victim waives the right to file a victim impact statement, either in writing or in open Court, the Court may proceed to an immediate pronouncement of sentence upon a finding of guilt.

(4) The Social Services Division shall attach the victim impact statement to the presentence report. The Court shall disclose the statement to both the prosecutor and defense counsel at a reasonable time prior to imposing sentence and shall consider the statement in determining the appropriate sentence.

(b) Presentence investigation.

(1) When made. Except for cases prosecuted in the District of Columbia and Traffic Branch and the Misdemeanor Branch, the Social Services Division of the Court shall make a presentence investigation and report to the Court before the pronouncement of the sentence or the granting of probation unless, with the permission of the Court, the defendant waives a presentence investigation and

report, or the Court finds that there is in the record information sufficient to enable the meaningful exercise of sentencing discretion, and the Court explains this finding on the record. For cases prosecuted in the Misdemeanor Branch, the Social Services Division shall make a presentence investigation and report upon request by the Court; provided, however, that if an investigation and report are not requested or made, and the defendant is not sentenced at the time of a guilty plea or guilty verdict, the Social Services Division shall provide the Court with the prior criminal record of the defendant and any victim impact statement as prescribed in *D.C. Code § 23-103a(b)*.

The report shall not be submitted to the Court or its contents disclosed to anyone unless the defendant has pleaded guilty, or nolo contendere, or has been found guilty, except that a judge may, with the consent of the defendant given on the record or in writing, inspect a presentence report at any time.

(2) Report. The report of the presentence investigation shall contain any prior criminal record of the defendant and such information about the defendant's characteristics, financial condition and the circumstances affecting the defendant's behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, any victim impact statement as prescribed in *D.C. Code § 23-103a(b)* and such other information as may be required by the Court.

(3) Disclosure. (A) The Court shall make available to the defendant through the defendant's counsel and to the counsel for the government a copy of the report of the presentence investigation a reasonable time before imposing sentence. To the extent that the report contains diagnostic opinion which might seriously disrupt a program of rehabilitation, sources of information obtained upon a promise of confidentiality, or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons, the Court may withhold any such portions of the presentence investigation report.

(B) If the Court is of the view that there is information in the presentence report which should not be disclosed under subdivision (b)(3)(A) of this Rule, the Court in lieu of making the report or part thereof available shall state orally or in writing a summary of the factual information contained therein to be relied on in determining sentence, and shall give the defendant or the defendant's counsel an opportunity to comment thereon. The statement may be made to the parties in camera.

(C) Any material disclosed to the one party shall also be disclosed to the adverse party.

(D) [Repealed].

(E) The reports of studies and recommendations contained therein made by the Department of Corrections of the District of Columbia, and the Board of Parole of the District of Columbia pursuant to *D.C. Code § 24-803(e)* [*§ 24-903(e)*, 2001 Ed.] shall be considered a presentence investigation within the meaning of paragraph (b)(3) of this Rule.

(c) Sentencing.

(1) Allocution. Before pronouncing sentence, the Court shall inquire on the record whether the defendant and defendant's counsel have had the opportunity to read and discuss any presentence investigation report made available pursuant to subdivision (b)(3)(A) or summary thereof made available pursuant to subdivision (b)(3)(B). The Court shall afford the defendant or the defendant's counsel an opportunity to comment and, at the discretion of the Court, to introduce testimony or other information relating to any alleged factual inaccuracy contained in the presentence investigation report. The Court shall also afford counsel an opportunity to speak on behalf of the defendant and

shall address the defendant personally and ask if the defendant wishes to make a statement in the defendant's own behalf and present any information in mitigation of punishment. The prosecutor shall have an equivalent opportunity to address the Court and present information pertinent to sentencing.

(2) Pronouncement. Sentence shall thereafter be pronounced. Unless the Court pronouncing a sentence otherwise provides, a sentence imposed on a defendant for conviction of an offense shall run consecutively to any other sentence imposed on such defendant for conviction of an offense. The defendant may be placed on probation unless otherwise provided by law. The trial judge shall precisely define any conditions of probation to the defendant.

(3) Notification of right to appeal. After pronouncing sentence in a case which has gone to trial on a plea of not guilty, the Court shall advise the defendant of the defendant's right to appeal and of the right of a person who is unable to pay the cost of an appeal to apply for leave to appeal in forma pauperis. There shall be no duty on the Court to advise the defendant of any right to appeal after sentence is imposed following a plea of guilty or nolo contendere. If the defendant so requests, the Clerk of the Court shall prepare and file further a notice of appeal on behalf of the defendant.

(d) Judgment. A judgment of conviction shall set forth the plea, verdict or finding, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. Except with respect to petty misdemeanors, the penalty for which does not exceed 6 months or a fine of not more than $ 500 or both, the judgment, indicating the sentence of commitment, shall be signed by the judge, certified by the Clerk, and then transmitted to the authority taking custody of or having supervision over the defendant.

(e) Withdrawal of plea of guilty. A motion to withdraw a plea of guilty or of nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice, the Court after sentence may set aside the judgment of conviction and permit the defendant to withdraw the plea.

(f) Discharge from probation, dismissal of proceedings, and expungement of official records pursuant to D.C. Code § 33-541(e) [*§ 48-904.01(e)*, 2001 Ed.].

(1) Discharge from probation and dismissal of proceedings. If a person has been placed on probation pursuant to D.C. Code § 33-541(e)(1) (1986 Supp.) [*§ 48-904.01(e)(1)*, 2001 Ed.], the Social Services Division shall, 30 days before the expiration of probation, notify the Court in writing if the person is not successfully completing probation. The Division shall mail a copy of the notice to the person, the person's attorney, the prosecutor, the Metropolitan Police Department, and the Clerk of the Criminal Division. The prosecutor may file and serve a response in opposition within 10 days. The Court may hold a hearing to determine whether the person has successfully completed probation. If the Court so determines, it shall enter an order discharging the person from probation and dismissing the proceedings against the person. The Court may, with notice as provided above, take such action prior to the expiration of the maximum period of probation imposed. If an order of discharge and dismissal is entered, the Clerk shall thereafter retain a nonpublic record of the case solely for use by the Courts in determining whether, in subsequent proceedings, such person qualifies for treatment under D.C. Code § 33-541(e)(1) [*§ 48-904.01(e)(1)*, 2001 Ed.].

(2) Expungement of official records. A person who has been discharged from probation and whose charges have been dismissed pursuant to D.C. Code § 33-541(e)(1) [*§ 48-904.01(e)(1)*, 2001 Ed.] and subparagraph (f)(1) of this Rule may file with the Court and serve upon the prosecutor a

motion for expungement of all official records relating to the offense. The prosecutor may file and serve an opposition within 10 days. If the Court, after hearing, determines that the person was discharged from probation and that the proceedings against the person were dismissed under D.C. Code § 33-541(e)(1) [*§ 48-904.01(e)(1)*, 2001 Ed.], the Court shall enter an order expunging all official records of the offense to the extent required by D.C. Code § 33-541(e)(2) [*§ 48-904.01(e)(2)*, 2001 Ed.]. In a case involving codefendants, the Court shall first sanitize the records to be expunged. The order of expungement shall not affect the nonpublic record maintained under D.C. Code § 33-541(e)(1) [*§ 48-904.01(e)(1)*, 2001 Ed.] and subparagraph (f)(1) of this Rule.

(g) Production of statements at sentencing hearing.

(1) In general. SCR-Criminal 26.2(a)-(d), and (f) applies at a sentencing hearing under this rule.

(2) Sanctions for failure to produce statement. If a party elects not to comply with an order under SCR-Criminal 26.2(a) to deliver a statement to the moving party, the Court may not consider the testimony of a witness whose statement is withheld.

Rule 32.1. Revocation or modification of probation.

(a) Revocation of probation.

(1) Preliminary revocation hearing. Whenever a probationer is held in custody on the ground that the probationer has violated a condition of probation, the probationer shall be afforded a prompt preliminary revocation hearing in order to determine whether there is probable cause to hold the probationer for a final revocation hearing. The probationer shall be given:

(A) Notice of the preliminary revocation hearing and its purpose and of the alleged violation of probation;

(B) An opportunity to appear at the hearing and to present evidence in the probationer's own behalf;

(C) Upon request, the opportunity to question witnesses against the probationer, and

(D) Representation by counsel, either retained or assigned, unless expressly waived by the probationer.

The proceedings shall be recorded stenographically or by an electronic recording device. The finding of probable cause may be based upon hearsay evidence in whole or in part. If probable cause is found to exist, the probationer may be held in custody pending a revocation hearing or may be released pursuant to Rule 46(a) of the criminal rules of this Court. If probable cause is not found to exist, the proceedings shall be dismissed.

Whenever the alleged violation of probation is based on an arrest for a criminal offense charged by complaint allegedly committed while on probation, a preliminary hearing held pursuant to Rule 5(d) of the criminal rules of this Court may serve as the preliminary revocation hearing required by this subsection if the provisions of this subsection have been fully satisfied.

(2) Final revocation hearing. The Court shall not revoke probation except after a final revocation hearing, unless such hearing is waived by the probationer. The probationer shall be given:

(A) Written notice of the alleged violation of probation;

(B) Disclosure of the evidence against the probationer;

(C) An opportunity to appear and to present evidence in the probationer's own behalf;

(D) The opportunity to question adverse witnesses; and

(E) Representation by counsel, either retained or assigned, unless expressly waived by the probationer.

(3) Time limits. Whenever the probationer is held in custody pending the revocation hearing following a preliminary revocation hearing pursuant to subsection (a)(1), the final revocation hearing shall be held and the Court shall decide whether to revoke probation no later than 60 days after the date of the preliminary revocation hearing. The Court may extend the period between the preliminary revocation hearing and the Court's decision on revocation upon a showing of good cause. If, within the time period set forth in this subsection or within any extension of time previously granted by the Court, the Court does not decide whether probation should be revoked, the probationer shall not be further detained by reason of the alleged probation violation until such time as the Court renders its decision. Whenever the alleged violation of probation is based on an arrest for an offense allegedly committed while on probation, which is also the subject of criminal charges against the probationer, the probationer shall have the right to have the final revocation hearing postponed beyond the 60-day time limit pending final disposition of the probationer's criminal charges. Any action taken by the defendant to have the final revocation hearing postponed shall have the effect of tolling the computation of time under this subsection. If the probationer exercises the right to postpone the final revocation hearing pending final disposition of the probationer's criminal charges, a final revocation hearing shall be held and the Court shall decide whether to revoke probation no later than 20 days after judgment or other final disposition of the pending charges. If within the time period set forth in this subsection, the judge does not decide whether probation should be revoked, then the probationer shall not be further detained by reason of the alleged violation of probation until such time as the judge renders a decision.

(b) Modification of probation. A hearing and the assistance of counsel are required before the terms or conditions of probation can be modified, unless the relief granted to the probationer upon the probationer's request or the Court's own motion is favorable to the probationer.

(c) Production of statements.

(1) In general. SCR-Criminal 26.2(a)-(d) and (f) applies at any hearing under this Rule.

(2) Sanctions for failure to produce statement. If a party elects not to comply with an order under SCR-Criminal 26.2(a) to deliver a statement to the moving party, the Court may not consider the testimony of a witness whose statement is withheld.

Rule 32.2. [Deleted].

Rule 33. New trial.

On a defendant's motion, the Court may grant a new trial to the defendant if the interests of justice so require. If trial was by the Court without a jury, the court may -- on defendant's motion for new trial -- vacate the judgment, take additional testimony, and direct the entry of a new judgment. A motion for a new trial based on newly discovered evidence may be made only before or within three years after the verdict or finding of guilty. But if an appeal is pending, the Court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds may be made only within 7 days after the verdict or finding of guilty or within such further time as the Court may fix during the 7-day period.

Rule 34. Arrest of judgment.

The Court on motion of a defendant shall arrest judgment if the indictment or information does not charge an offense or if the Court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within 7 days after verdict or finding of guilty, or after plea of guilty or nolo contendere, or within such further time as the Court may fix during the 7-day period.

Rule 35. Correction or reduction of sentence or collateral; setting aside forfeiture.

(a) Correction of sentence. The Court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence.

(b) Reduction of sentence. A motion to reduce a sentence may be made not later than 120 days after the sentence is imposed or probation is revoked, or not later than 120 days after receipt by the Court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or not later than 120 days after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction or probation revocation. The Court shall determine the motion within a reasonable time. After notice to the parties and an opportunity to be heard, the Court may reduce a sentence without motion, not later than 120 days after the sentence is imposed or probation is revoked, or not later than 120 days after receipt by the Court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or not later than 120 days after entry of any order or judgment of the Supreme Court, denying review of, or having the effect of upholding, a judgment of conviction or probation revocation. Changing a sentence from a sentence of incarceration to a grant of probation shall constitute a permissible reduction of sentence under this paragraph.

(c) Setting aside forfeiture. No forfeiture of collateral security or of an unsecured personal appearance bond shall be vacated unless application therefor is made within 90 days after said forfeiture and upon good cause shown.

(d) Reduction of collateral in traffic cases. The amount of collateral security required in a traffic case may be reduced by a judge only if (1) such reduction has been specifically recommended in

writing by the Corporation Counsel or an assistant Corporation Counsel on a form separate from the notice of violation, or (2) the judge states the reasons for the reduction in writing on a form separate from the notice of violation. In all such cases the Central Violations Bureau shall submit a monthly report of such reductions to the Chief Judge.

Rule 36. Clerical mistakes.

Clerical mistakes and errors in judgments, orders, or other parts of the record not including the transcript which arise from oversight or omission may be corrected by the Court at any time and after such notice, if any, as the Court orders. No changes in any transcript may be made by the Court except on notice to the prosecutor and counsel for the defendant. Where changes are made in the transcription of proceedings, the corrections and deletions shall be shown.

Rule 36-I. Recording of Court proceedings; release of transcripts.

(a) All proceedings recorded. All proceedings shall be simultaneously recorded verbatim by a reporter engaged by the Court by shorthand or mechanical means or, when permitted by rule of court, by an electronic sound recording device.

(b) Ordering transcripts.

(1) Any person who has made suitable arrangements to pay the appropriate fee, shall be entitled to obtain a transcript of all or any part of any recorded proceedings in open court. As used in this Rule, proceedings in open court shall constitute all recorded judicial proceeding in a non-jury case, and in a case tried by a jury shall constitute all recorded judicial proceedings except pretrial hearings on the admissibility of evidence, discussions in chambers, bench conferences or other recorded proceedings in which the jury does not participate.

(2) In a case tried to a jury, any party to the proceedings who has made suitable arrangements to pay the fee specified, or any judge of the District of Columbia Court of Appeals or any judge of this Court, shall be entitled to obtain a transcript of any part of the recorded proceedings, whether or not held in open court. In a case tried to a jury, prior to rendition of a verdict or discharge of the jury, any person other than a party to the proceedings shall apply to the judge presiding over the trial for permission to obtain a transcript of any part of the recorded proceedings not held in open court. In determining whether such an application should be granted in whole or in part, the presiding judge shall consider the parties' right to a fair trial and the public's interest in a free press. The presiding judge may condition the granting of such application upon such terms as may be appropriate, may sequester the jury, or may take such other approved procedures as seem necessary to insure a fair trial in the case. After rendition of a verdict or discharge of the jury, all recorded proceedings of a case tried to a jury shall be treated as proceedings in open court.

(c) Endorsement on transcript. Each transcript obtained in accordance with this Rule shall bear the following endorsement upon its cover page:

"This transcript represents the product of an official reporter, engaged by the Court, who has personally certified that it represents the testimony and proceedings of the case as recorded."

(d) Transcript on appeal. Upon the completion of any transcript in a matter to be brought before the appellate court the reporter or transcriber shall notify the trial court and counsel that the transcript has been completed and will be forwarded to the Court of Appeals 5 days hence. The said notice shall inform counsel that any objections to the transcript must within the said 5 days be presented to the trial court and served on opposing counsel in the manner prescribed in SCR Civil 5. Objections raised by the Court sua sponte shall be made known to the parties who shall be given an opportunity to make appropriate representations to the Court before the objections are resolved. All objections shall be resolved by the trial court on the basis of the best available evidence as to what actually occurred in the proceedings.

(e) Security of original transcript. In any case in which a transcript is ordered by any person, the reporter or transcriber shall deliver to said person a carbon copy or copies of any transcript prepared. The original of the transcript, bearing the required certificate, shall be filed by the reporter or transcriber with the Clerk of the Court and shall not be changed in any respect except pursuant to rule of court.

(f) Private reporters. Except as provided in paragraphs (g) and (h) of this Rule, only a court reporter who is a court employee, or who is under contract to the court to provide reporting services, is permitted to record proceedings held before a judge or hearing commissioner.

(g) Electronic recording devices. The use of court operated electronic recording devices may be permitted by the Chief Judge of the Superior Court for the perpetuation of a record in any court proceeding without the presence of a court reporter during such proceeding.

(h) Restriction on the use of electronic recording devices. No electronic recording equipment, other than that in the custody and control of official court reporters or court personnel in the performance of their official duties, may be used to record proceedings held before a judge or hearing commissioner.

Rule 37. Appeals.

The fee for the filing of a notice of appeal in a criminal case shall be $ 5. Appeals from judgments or orders of the Court to the District of Columbia Court of Appeals shall be governed by the Rules of the latter Court now existing or as hereafter modified.

Rule 38. Stay of execution.

(a) Vacant.

(b) Imprisonment. A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is released pending disposition of appeal pursuant to Rule 9(b) of the Rules of the District of Columbia Court of Appeals. If not stayed the Court may recommend to the Attorney General that the defendant be retained at, or transferred to, a place of confinement near the place of trial or the place where an appeal is to be heard, for a period reasonably necessary to permit the defendant to assist in the preparation of appeal.

(c) Fine. A sentence to pay a fine or a fine and costs, if an appeal is taken, may be stayed by the Superior Court upon such terms as the Court deems proper. The Court may require the defendant pending appeal to deposit the whole or any part of the fine and costs in the registry of the Superior Court, or to give bond for the payment thereof, or to submit to an examination of assets and it may make any appropriate order to restrain the defendant from dissipating such defendant's assets.

(d) Probation. An order placing the defendant on probation may be stayed if an appeal is taken. If not stayed, the Court shall specify when the term of probation shall commence. If the order is stayed the Court shall fix the terms of the stay.

Rule 39. [Omitted].

Rule 40. Release and detention of federal offenders.

The Superior Court, with respect to any criminal case over which the United States District Court for the District of Columbia has jurisdiction, may release or detain such offenders in accordance with Chapter 13 of D.C. Code Title 23.

Rule 40-I. State fugitives and extradition.

(a) Warrants for the arrest of fugitives from justice. The Court, upon the complaint on oath of any credible witness setting forth an offense which the defendant has committed in any state, that the defendant is a fugitive from justice, that the defendant is within the District of Columbia and liable by the Constitution and laws of the United States to be delivered over upon the demand of the governor of that state, and such other matters as are necessary to bring the case within the provisions of law, may issue a warrant to bring the defendant before the Court to answer the complaint.

(b) Preliminary examination. The defendant arrested on a warrant issued under paragraph (a) shall be taken before the Court for preliminary examination. If it appears that there is reasonable cause to believe that the complaint is true and that the person may be lawfully demanded of the Chief Judge, the defendant shall be detained or released according to law, in like manner as if the offense had been committed in the District of Columbia, to appear before the Court at a future date, allowing 30 days to obtain a requisition from the governor of the state from which the person is a fugitive. The complaint of fugitivity from another jurisdiction shall create a presumption that the person is unlikely to appear if released, which may be overcome only by clear and convincing proof.

(c) Appearance date. If the person so released or detained shall appear before the Court upon the date ordered, the person shall be discharged, unless the person shall be demanded by requisition or unless the Court shall find cause to detain or to release the person until a later day.

(d) Period of detention. A defendant detained on a fugitive warrant shall not be held in jail longer than to allow a reasonable time for a proper requisition to be applied for and obtained. In de-

termining what is a reasonable time the Court shall consider the circumstances of the case and the distance of the place where the offense is alleged to have been committed.

(e) Waiver of further proceedings. At any time prior to the filing of a requisition, a defendant arrested on a fugitive warrant may in open court waive orally and in writing further proceedings. Following waiver, a judge of the Superior Court may, in the judge's discretion, if the United States Attorney consents, release the defendant on such conditions as the judge shall deem necessary to insure the defendant's appearance before the proper official in the state from which the defendant was a fugitive, and shall otherwise order the defendant's return to the jurisdiction of that state in the custody of a proper official. Following waiver, if the defendant is not released, the defendant shall be ordered to return to the jurisdiction from which the defendant is a fugitive in the custody of a proper official and may be detained to await return. Such detention shall not exceed 3 days, not including Saturdays, Sundays, and holidays, unless the Court shall find good reason to extend the defendant's detention for an additional 3 days to obtain the attendance of a proper official of the demanding jurisdiction.

(f) Further proceedings not waived. If a defendant has not waived further proceedings and a requisition from the governor of the jurisdiction from which the person is a fugitive is presented to the Court, the Court shall order the requisition to be filed and referred to the Chief Judge for extradition proceedings and shall order the defendant committed pending those proceedings.

(g) Extradition. In all cases where the laws of the United States so provide, the Chief Judge of the Superior Court shall cause to be apprehended and delivered up in the manner and under the regulations provided by Chapter 209 of Title 18, United States Code any fugitive from justice who shall be found in the District of Columbia. The Chief Judge of the Superior Court may also surrender, on demand of the governor of any state, any defendant in the District of Columbia charged in that state with committing an act in the District of Columbia or in another state, intentionally resulting in a crime in the state whose authority is making the demand, even though the accused was not in that state at the time of the commission of the crime and has not fled therefrom. No defendant shall be delivered over to the executive authority or an agent demanding the defendant unless the defendant shall first be taken before the Chief Judge of the Superior Court who shall inform the defendant of the demand for the defendant's surrender, and of the crime with which the defendant is charged, and that the defendant has the right to demand and procure legal counsel. If the defendant or the defendant's counsel shall state that the defendant desires to test the legality of the arrest, the Chief Judge shall hold a hearing to determine whether the defendant shall be delivered over as demanded. At the hearing, the person shall have the same rights to challenge the person's detention and extradition as if the hearing were upon a writ of habeas corpus. An order delivering over a defendant shall state the time of day when it was issued. A defendant may waive the right to appear before the Chief Judge and voluntarily return in custody of a proper official to the jurisdiction of the state demanding the defendant. No person demanded by the governor of a state shall be released upon bond or other obligation except pursuant to an order of a court of the demanding state. An associate judge designated by the Chief Judge or acting Chief Judge shall have the same power to act pursuant to this paragraph as the Chief Judge.

Rule 41. Search and seizure.

(a) Authority to issue warrant. A search warrant authorized by this Rule may be issued by a judge of the Superior Court.

(b) Property or persons which may be seized with a warrant. A warrant may be issued under this Rule to search for and seize any (1) property that constitutes evidence of the commission of a criminal offense; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) property designed or intended for use or which is or has been used as the means of committing a criminal offense; or (4) person for whose arrest there is probable cause, or who is unlawfully restrained.

(c) Application for search warrants. Each application for a search warrant shall be made in writing upon oath to a judge of the Superior Court. Each application shall include the name and title of the applicant; a statement that there is probable cause to believe that property or persons described in paragraph (b) as subject to seizure are likely to be found in a designated premise, in a designated vehicle or object, or upon designated persons; allegations of fact supporting such statement; and a request that the judge issue a search warrant directing a search for and seizure of the property or person in question. The applicant may also submit depositions or affidavits of other persons containing allegations of fact supporting or tending to support those contained in the application.

The application may also contain a request that the search warrant be made executable at any hour of the day or night, upon the ground that (1) there is probable cause to believe that it cannot be executed during the hours of daylight, or (2) the property sought is likely to be removed or destroyed if not seized forthwith, or (3) the property or person sought is not likely to be found except at certain times or in certain circumstances. Any request that a search warrant be executable at any time of the day or night must be accompanied and supported by allegations of fact supporting such request.

(d) Issuance and contents. Upon application of a law enforcement officer or prosecutor, a judge of the Superior Court may issue a search warrant if the judge is satisfied that grounds for its issuance exist or that there is probable cause to believe that they exist. The finding of probable cause may be based upon hearsay evidence in whole or in part. A search warrant shall contain:

(1) The name of the issuing court, the name and signature of the issuing judge, and the date of issuance;

(2) If the warrant is addressed to a specific law enforcement officer, the name of that officer, otherwise, the classifications of officers or agents to whom the warrant is addressed;

(3) A designation of the premises, vehicles, objects, or persons to be searched, sufficient for certainty of identification;

(4) A description of the property or person whose seizure is the object of the warrant;

(5) A direction that the warrant be executed during the hours of daylight or, where the judge has found cause therefor under paragraph (c), an authorization for execution at any time of the day or night;

(6) A direction that the warrant and an inventory of any property or person seized pursuant thereto be returned to the Court on the next court day after its execution.

(e) Execution; return with inventory.

(1) Time of execution. A search warrant shall not be executed more than 10 days after the date of issuance. A search warrant may be executed on any day of the week and, in the absence of express authorization in the warrant, shall be executed only during hours of daylight.

(2) Place of execution. A search warrant may be executed anywhere within the District of Columbia.

(3) Manner of execution. An officer or agent executing a warrant directing a search of a dwelling house, other building, or vehicle may break and enter any of these premises pursuant to *18 U.S.C. § 3109*. An officer or agent executing a warrant directing a search of a person shall give, or make reasonable effort to give, notice of the officer's or agent's identity and purpose to the person.

(4) Inventory and return. An officer or agent executing a search warrant shall write and subscribe an inventory setting forth the time of the execution of the search warrant and the property or person seized under it. If the search is of a person, a copy of the warrant and of the return shall be given to that person. If the search is of a place, vehicle, or object a copy of the warrant and of the return shall be given to the owner if the owner is present, or if the owner is not, to an occupant, custodian, or other person present, or if no person is present, the officer or agent shall post a copy of the warrant and of the return on the place, vehicle, or object searched.

(f) Filing of papers; disposition of seized property. A copy of the warrant shall be filed with the Court on the next court day after its execution, together with a copy of the return. Property seized in the execution of the warrant shall be safely kept for use as evidence. No property seized shall be released or destroyed except in accordance with law and upon order of a court or of the United States Attorney or Corporation Counsel for the District of Columbia or 1 of their assistants.

(g) Motion for return of property and to suppress evidence. A person aggrieved by an unlawful search and seizure or by the deprivation of property may move the Court for the return of property and to suppress for use as evidence anything so obtained on the ground that such person is entitled to lawful possession of the property. The Court shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted and has become final the property shall be returned to the movant, although reasonable conditions may be imposed to protect access and use of the property in subsequent proceedings.

(h) Scope and definition. This Rule does not modify any act, inconsistent with it, regulating search, seizure and the issuance and execution of search warrants in circumstances for which special provision is made. The term "property" is used in this Rule to include documents, books, papers and any other tangible objects.

Rule 41-I. Interception of wire or oral communications.

(a) Authorization to apply. When authorized in writing by the United States Attorney or by a designated assistant, any investigative or law enforcement officer may make application to the Court for an order authorizing the interception of wire or oral communications or for an order of approval of a previous interception of any wire or oral communication qualifying under *D.C. Code*

§ 23-546(b). An application for an order of authorization or of approval may be authorized by the United States Attorney or by a designated assistant only when the interception may provide or has provided evidence of the commission of or a conspiracy to commit any of the offenses listed in *D.C. Code § 23-546(c)*.

(b) Application; form and contents. Each application shall be made in writing upon oath to a judge and shall state the applicant's authority to make the application. The application shall include --

(1) The identity of the investigative or law enforcement officer making the application and of the officer authorizing the application;

(2) A full and complete statement of facts and circumstances relied upon by the applicant to justify the applicant's belief that an order should be issued, including (i) details as to the particular offense that has been, is being, or is about to be committed, (ii) a particular description of the nature and location of the facilities from which or the place where the communication is to be or was intercepted, (iii) a particular description of the type of communications sought to be or which were intercepted, and (iv) the identity of the person, if known, who committed, is committing, or is about to commit the offense and whose communications are to be or were intercepted;

(3) A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear or appeared to be unlikely to succeed if tried or to be too dangerous;

(4) A statement of the period of time for which the interception is or was required to be maintained or a particular description of facts establishing probable cause to believe that additional communications of the same type will or would occur thereafter so that the authorization will or would not automatically terminate;

(5) A full and complete statement of the facts concerning all previous applications, known to the individual authorizing or making the application, made to any judge involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each such application; and

(6) Where the application is for an extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain results.

(c) Issuance. Upon application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire or oral communications within the District of Columbia, if the judge determines on the basis of facts submitted that --

(1) There is or was probable cause for belief that a person whose communication is to be or was intercepted is or was committing, has committed, or is about to commit an offense listed in *D.C. Code § 23-546(c)*;

(2) There is or was probable cause for belief that particular communications concerning that offense will or would be obtained through the interception;

(3) Normal investigative procedures have or would have been tried and have or had failed or reasonably appear or appeared to be unlikely to succeed if tried or to be too dangerous; and

(4) There is or was probable cause for belief that the facilities from which, or the place where, the communications are to be or were intercepted were used, are being used, or are about to be used

in connection with commission of such offense, or are or were leased to, listed in the name of, or commonly used by the person referred to in subparagraph (1).

(d) Issuance in specified instances. If the facilities from which a wire communication is to be or was intercepted are or were being used by, are or were about to be used by, or are or were leased to, listed in the name of or commonly used by, a licensed physician, a licensed attorney, or practicing clergyman, or if the place where an oral communication is to be or was intercepted is or was a place used primarily for habitation by a husband and wife or primarily by a licensed physician, licensed attorney, or practicing clergyman for that person's own professional purposes, no order authorizing or approving such interception may be issued unless the judge, in addition to the matters provided in paragraph (c), determines that --

(1) Such facilities or place are or were being used or are or were about to be used in connection with conspiratorial activities characteristic of organized crime; and

(2) Such interceptions will be so conducted as to minimize or eliminate the number of interceptions of privileged wire or oral communications between licensed physicians and patients, licensed attorneys and clients, practicing clergyman and confidants, and husbands and wives. No otherwise privileged wire or oral communication intercepted in accordance with, or in violation of, the provisions of this Rule shall lose its privileged character.

(e) Specifications in and contents of the order. Each order authorizing or approving the interception of any wire or oral communications shall specify or contain --

(1) The identity of the person, if known, or otherwise a particular description of the person, if known, whose communications are to be or were intercepted;

(2) The nature and location of the communication facilities as to which, or the place where, authority to intercept or any approval of interception is or was granted;

(3) A particular description of the type of communication sought to be or which was intercepted, and a statement of the particular offense to which it relates;

(4) The identity of the agency authorized to intercept or whose interception is approved, and of the person authorizing the application;

(5) The period of time during or for which the interception is authorized or approved, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained; and

(6) A provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize or eliminate the interception of communications not otherwise subject by law to interception, and must terminate upon attainment of the authorized objective, or in any event in 30 days.

(f) Further contents.

(1) By direction of the judge. An order issued pursuant to paragraph (c) and, if applicable, paragraph (d), may require reports to be made to the judge who issued the order showing what progress has been made toward the achievement of the authorized objective and the need for continued interception. Reports shall be made at such intervals as the judge may require.

(2) Upon request of the applicant. Upon the request of the applicant, an order issued pursuant to paragraph (c), and, if applicable, paragraph (d), shall direct that a communication common carrier, landlord, custodian, or other person shall furnish the applicant forthwith all information, facilities, or technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier, landlord, custodian, or person is according the person whose communications are to be intercepted.

(g) Extensions. An application for extension may be made in accordance with paragraph (a), but no extension order may be granted on such application unless the judge makes the determinations listed in paragraph (c) and, if applicable, the determinations listed in paragraph (d).

(h) Additional procedures on certain orders of approval.

(1) Organized crime emergencies. Notwithstanding any other paragraph of this Rule, any investigative or law enforcement officer, specially designated by the United States Attorney for the District of Columbia or a designated assistant, who reasonably determines that (i) an emergency situation exists with respect to conspiratorial activities characteristic of organized crime that requires a wire or oral communication to be intercepted before an order authorizing the interception can with due diligence be obtained, and (ii) there are grounds upon which an order could be entered under paragraphs (c) and (d) to authorize interception, may intercept the communication if an application for an order approving the interception is initiated within 12 hours and is completed within 72 hours after the interception has occurred, or begins to occur. Such application shall be treated under paragraphs (c) and (d).

(2) Other than authorized offenses. When an investigative or law enforcement officer, while engaged in intercepting wire or oral communications in the manner authorized under paragraphs (c), (d), or (h)(1), intercepts wire or oral communications relating to offenses other than those so authorized, the officer shall make as soon as practicable an application to a judge for approval for disclosure and use of the information intercepted. Such application shall be treated under paragraphs (c) and (d).

(i) Maintenance and custody of records.

(1) Contents of interceptions. The contents of any intercepted oral or wire communication shall, if possible, be recorded on tape or wire or other comparable device. Immediately upon the expiration of the period of the order, or extensions thereof, the recordings shall be made available to the judge issuing the order and sealed under the judge's directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for 10 years.

(2) Contents of applications made and orders granted. Applications made and orders granted under this Rule shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. Except as otherwise provided in paragraph (k) the applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for 10 years.

(j) Inventory.

(1) Recipients; time of inventory. Within a reasonable time not to exceed 90 days after the filing of an application for an order of approval under paragraph (h) which is denied, or the termina-

tion of the period of any order or extensions thereof, the issuing or denying judge shall cause an inventory to be served on the persons named in the order or the application and such other parties to intercepted communications as the Court may determine are necessary in the interest of justice. On an ex parte showing of good cause to a judge, the serving of the inventory may be postponed.

(2) Contents of the inventory. The inventory described in subparagraph (1) shall include notice of (i) the fact of the entry of the order or the application for an order of approval which was denied; (ii) the date of the entry of the order or the denial of the application for an order of approval; (iii) the period of authorized, approved, or disapproved interception; and (iv) whether during the period wire or oral communications were intercepted.

(3) Inspection. The judge, upon the filing of a motion, may make available to the person or the person's counsel for inspection such portions of the intercepted communications, applications, and orders as the judge determines to be in the interest of justice.

(k) Use of intercepted communications.

(1) In general. Any communication intercepted in conformity with this Rule, or evidence derived therefrom, may be disclosed or used by any person who has lawfully obtained knowledge of its contents while giving testimony under oath in any criminal trial, hearing, or proceeding before any grand jury or court. Any other disclosure or use shall be in conformity with law.

(2) Exceptions. The presence of a seal as provided under paragraph (i) or the satisfactory explanation for the absence thereof shall be a prerequisite for such disclosure or use. A further prerequisite for disclosure or use shall be the service not less than 10 days before trial, hearing or other proceeding (i) of the inventory provided in paragraph (j) and (ii) of the parties to the action with a copy of the order and accompanying application under which the interception was authorized or approved. The 10-day period may be waived by court order when the Court finds it was not possible to furnish the information and the party will not be prejudiced by the delay in receiving the information.

(l) Motion to suppress.

(1) By whom. Any aggrieved person in any trial, hearing or other proceeding before any court, department, officer, agency, regulatory body, or other authority of the United States or District of Columbia may move to suppress the contents of any intercepted wire or oral communication, or evidence derived therefrom.

(2) Grounds. A motion made under subparagraph (1) may be based on the grounds that (i) the communication was unlawfully intercepted; (ii) the order of authorization or approval under which it was intercepted is insufficient on its face; (iii) the interception was not made in conformity with the order of authorization or approval; (iv) service was not made as provided in paragraph (k); or (v) the seal prescribed by paragraph (i) is not present and there is no satisfactory explanation for its absence.

(3) Time of making motion. The motion shall be made before trial, hearing, or other proceeding unless there was no opportunity to make the motion or the person was not aware of the grounds of the motion.

(4) Disposition. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom shall not be received in evidence in the trial, hearing, or proceeding.

(5) Inspection. Upon the filing of the motion by the aggrieved person, the judge may make available to the aggrieved person or the person's counsel for inspection such portions of the intercepted communication, or evidence derived therefrom, as the judge determines to be in the interest of justice.

Rule 42. Criminal contempt.

(a) Summary disposition. A criminal contempt may be punished summarily if the judge certifies that the judge saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the Court. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.

(b) Disposition upon notice and hearing. A criminal contempt except as provided in paragraph (a) of this Rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the United States Attorney, of the Corporation Counsel, or of an attorney appointed by the Court for that purpose, by an order to show cause or an order of arrest. The defendant is entitled to a trial by jury in any case in which an act of Congress so provides. The defendant is entitled to be released on conditions or detained as provided in these Rules. If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt the Court shall enter an order fixing the punishment.

Rule 43. Presence of the defendant.

(a) Presence required. The defendant shall be present at the arraignment, at the time of the plea, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by this Rule.

(b) Continued presence not required. The further progress of the trial to and including the return of the verdict shall not be prevented and the defendant shall be considered to have waived the right to be present whenever a defendant, initially present,

(1) Is voluntarily absent after the trial has commenced (whether or not the defendant has been informed by the Court of the obligation to remain during the trial), or

(2) After being warned by the Court that disruptive conduct will cause the removal of the defendant from the courtroom, persists in conduct which is such as to justify exclusion from the courtroom.

(c) Presence not required. A defendant need not be present:

(1) When represented by counsel and the defendant is a corporation or other person not an individual;

(2) When the offense is punishable by fine or by imprisonment for not more than one year or both, and the Court, with the written consent of the defendant, permits arraignment, plea, trial, and imposition of sentence in the defendant's absence;

(3) When the proceeding involves only a conference or hearing upon a question of law; or

(4) When the proceeding involves a reduction or correction of sentence under Rule 35.

Rule 44. Right to assigned counsel; joint representation.

(a) Assigned counsel. Every defendant who is unable to obtain counsel shall be entitled to have counsel assigned to represent that defendant at every stage of the proceedings from initial appearance before the Court, unless that defendant waives such appointment.

(b) Joint representation. Whenever 2 or more defendants have been jointly charged pursuant to Rule 8(b) or have been joined for trial pursuant to Rule 13, and are represented by the same retained or assigned counsel or by retained or assigned counsel who are associated in the practice of law, the Court shall promptly inquire with respect to such joint representation and shall personally advise each defendant of the right to the effective assistance of counsel, including separate representation. Unless it appears that there is good cause to believe no conflict of interest is likely to arise, the Court shall take such measures as may be appropriate to protect each defendant's right to counsel.

Rule 44-I. Assignment of counsel.

(a) Appointment authority. From a list of attorneys prepared and maintained pursuant to *D.C. Code 1981, § 11-2601*, the judges or hearing commissioners sitting in the Assignment Section, the District of Columbia Section, the Traffic Section, and the Tax Division shall appoint counsel to represent persons qualifying under *D.C. Code 1981, § 11-2601*, this Rule, or who are otherwise entitled to the appointment of counsel. Counsel may similarly be appointed by a judge or hearing commissioner to whom a case has been assigned under these Rules for further proceedings.

(b) Notification of availability for appointment. Attorneys available for appointments should so advise the Deputy Coordinator's Office before 10:00 a.m. of the day on which they are available for appointments.

(c) Deprivation of appointment. An attorney who is not present when the attorney's case is called for arraignment or presentment may be deprived of that appointment and, if absent without adequate excuse, may be subject to further sanction.

(d) Appointment considerations. In appointing counsel, in addition to the counsel's qualifications, the judge shall consider whether the counsel seeking appointment can be relied upon to be present when required.

(e) Scheduling of trials. Defense attorneys shall not schedule more than 3 trials for any continued date, except on notice to and with permission of the Court.

(f) Legal assistance by law students.

(1) Practice.

(A) Any law student admitted to the limited practice of law, pursuant to Rule 48 of the general Rules of the District of Columbia Court of Appeals, and certified and registered as therein required, may engage in the limited practice of law in the Superior Court of the District of Columbia in connection with any criminal case or matter (not involving a felony), on behalf of any indigent person who has consented in writing to that appearance, provided that a "supervising lawyer", as hereinafter defined, has approved such action and also entered an appearance.

(B) Any law student eligible under these rules may also appear in any criminal case or matter on behalf of the United States or the District of Columbia with the written approval of the United States Attorney or Corporation Counsel, or their authorized representatives, and the "supervising lawyer".

(C) In each case, the written consent and approval referred to above shall be filed in the record of the case.

(2) Requirements and limitations.

(A) The law student must be enrolled in a clinical program. A clinical program for purposes of this Rule shall be a law school program for credit of at least 4 semester hours held under the direction of a full-time faculty member of such law school, or an adjunct professor for a consortium of law schools, whose primary duty is the conduct of such program in which a law student obtains practical experience in the operation of the District of Columbia legal system by participating in cases and matters pending before the courts or administrative tribunals. A student need not be so enrolled if that student has satisfactorily completed a clinical program and is continuing in the representation of a program's client.

(B) The law student must be registered and certified by the Admissions Committee of the District of Columbia Court of Appeals as eligible to engage in the limited practice of law as authorized by the District of Columbia Court of Appeals General Rule 48.

(C) Certified law students participating in the representation of the government or any individual litigant shall not schedule more than 1 trial for any single date except on notice to and with permission of the Court.

(3) Supervision. The "supervising lawyer" referred to in this Rule shall:

(A) Be a lawyer whose service as a supervising lawyer for the clinical program is approved by the law school by which the law student is enrolled and who is an active practitioner of law in this Court.

(B) Assume full responsibility for guiding the student's work in any pending case or matter or any activity in which he or she participates, and for supervising the quality of that student's work.

(C) Assist the student in his or her participation to the extent necessary in the supervising lawyer's professional judgment to insure that the student participation is effective on behalf of the indigent person represented.

(D) Sign each pleading, memorandum, or other document filed by the student, and appear with the student at each Court appearance, except that the supervisor need not be present for a non-adversary matter so long as he or she is available to the Court within one-half hour after such supervisor's presence is requested by the Court.

(E) Not schedule more than 3 cases for trial on any given day for law students being supervised by him or her.

(F) No CJA funds shall be paid to any student or supervising lawyer in any case in which a law student is appointed pursuant to this Rule.

(g) Suspension or removal.

(1) Grounds.

(A) An attorney may be suspended from the list of attorneys maintained pursuant to *D.C. Code § 11-2601* (1989 Repl.) for willful falsification, by commission or omission, of any material information in any voucher, requisition or other document relating to the District of Columbia Criminal Justice Act, for receipt of other payments in violation of *D.C. Code §§ 11-2604* to 11-2606 (1989 Repl.), or for any other conduct which violates the provisions of the District of Columbia Criminal Justice Act, the Plan For Furnishing Representation To Indigents Under The District Of Columbia Criminal Justice Act or any guidelines promulgated by the Superior Court Board of Judges for the implementation of the Plan.

(B) Any person or organization authorized pursuant to *D.C. Code § 11-2605* (1989 Repl.) to provide investigative, expert or other services may be suspended or removed from further participation in the District of Columbia Criminal Justice Act Program for willful falsification by commission or omission, of any material information in any voucher, requisition or other document relating to the District of Columbia Criminal Justice Act, for receipt of other payments in violation of *D.C. Code § 11-2606* (1989 Repl.), or for any other conduct which violates the provisions of the District of Columbia Criminal Justice Act, the Plan For Furnishing Representation To Indigents Under The District Of Columbia Criminal Justice Act or any guidelines promulgated by the Superior Court Board of Judges for the implementation of the Plan.

(2) Disciplinary committee. The power to suspend an attorney and the power to suspend or remove any other person or organization appointed or otherwise employed pursuant to the District of Columbia Criminal Justice Act shall be vested in a committee of judges appointed by the Chief Judge.

(3) Procedures. No order of suspension or removal shall be entered unless the respondent has been given an opportunity to be heard. Notice of the hearing date together with a clear and concise statement of the complaint against the respondent shall be served by certified mail not less than 21 days before the date of the hearing. In the conduct of the hearing, the committee may follow such procedures as it deems appropriate.

Rule 45. Time.

(a) Computation. In computing any period of time the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of some paper in Court, a day or any part of a day in which the office of the Clerk is closed, in which event the period runs until the end of the next day which is not one of the afore-

mentioned days. When a period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in these Rules, "legal holiday," includes New Year's Day, Martin Luther King, Junior's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States.

(b) Enlargement. When an act is required or allowed to be done at or within a specified time, the Court for cause shown may at any time in its discretion (1) with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done if the failure to act was the result of excusable neglect, but the Court may not extend the time for taking any action under Rules 29, 33, 34 and 35, except to the extent and under the conditions stated in them.

(c) [Omitted].

(d) For motions; affidavits. A written motion, other than one which may be heard ex parte, shall be served in such a manner as to permit the timely filing of opposing points and authorities and the giving of notice of hearing in conformity with Rule 47 unless a different period is fixed by rule or order of the Court. For cause shown such an order may be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not less than 1 day before the hearing unless the Court permits them to be served at a later time.

(e) Additional time after service by mail. Whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or other paper upon that party and the notice or other paper is served by mail, 3 days shall be added to the prescribed period.

Rule 46. Release from custody or detention.

(a) Release prior to trial. Eligibility for release or detention prior to trial shall be in accordance with *D.C. Code §§ 23-1321 through 1331*.

(b) Release pending sentence or appeal. Eligibility for release pending sentence or pending appeal shall be in accordance with *D.C. Code § 23-1325*.

(c) Release of material witness. The release or detention of a material witness shall be in accordance with *D.C. Code § 23-1326*.

(d) Order of release or detention. Upon ordering release pursuant to *D.C. Code § 23-1321*, the Court shall issue an order as provided in *D.C. Code § 23-1321(c)(1)*. If the Court orders detention of the defendant before trial pursuant to *D.C. Code § 23-1322(b)*, it shall issue an order as provided in *D.C. Code § 23-1322(g)*.

(e) Supervision of detention. With respect to defendants and witnesses who are detained, the Court, in cooperation with the District of Columbia Pretrial Services Agency acting pursuant to

D.C. Code § 23-1303(h)(6), shall exercise supervision for the purpose of eliminating all unnecessary detention.

(f) Production of statements.

(1) In general. SCR-Criminal 26.2(a)-(d) and (f) applies at detention hearings held under *D.C. Code §§ 23-1322*, *23-1323*, *23-1325(a)* and *23-1329*, unless the Court, for good cause shown, rules otherwise in a particular case.

(2) Sanctions for failure to produce statements. If a party elects not to comply with an order under SCR-Criminal 26.2(a) to deliver a statement to the moving party, at the detention hearing the Court may not consider the testimony of a witness whose statement is withheld.

(g) Definition of "Court". As used in this Rule, the term "Court" shall mean a Superior Court judge or magistrate judge.

Rule 46-I. [Deleted].

Rule 47. Motions.

An application to the Court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the Court permits it to be made orally. It shall state the grounds upon which it is made and shall set forth the relief or order sought. It may be supported by affidavit.

Rule 47-I. Motions procedure.

(a) Service and filing. A copy of a written motion shall be served upon all parties or their counsel unless movant obtains leave of the Court not to do so, and the motion including a certificate of service shall be filed with the Clerk of the Court.

(b) Points and authorities; entry of motions, etc.; opposing points and authorities. With each motion there shall be filed a statement of the specific points of law and authorities to support the motion. Such statement shall be additional to a statement of grounds in the motion itself, and it shall be entered on the docket. All citations to cases decided by the United States Court of Appeals for the District of Columbia Circuit shall include the volume number and page of both U.S. App. D.C. and the Federal Reporter. A statement of opposing points and authorities shall be similarly filed, noted and served.

(c) Time for filing. All motions, except motions to compel discovery, to dismiss for lack of speedy trial, or motions for release on conditions, for review of such conditions, for reduction of bond or collateral, or for continuance, shall be filed within 20 days after the status hearing in felony cases and in misdemeanor cases where a jury trial has been demanded unless otherwise provided by the Court. In misdemeanor cases scheduled for a bench trial, all such motions shall be filed within

10 days of arraignment or entry of appearance of counsel, whichever date is later, unless otherwise provided by the Court. A written statement of opposing points and authorities shall be filed within 10 days thereafter and shall be served upon all parties, unless otherwise provided by the Court. If the opposition is not filed within the prescribed time, the Court may treat the motion as conceded.

(d)-(f) [Deleted].

(g) Ruling on motion. A motion made before trial shall be determined before trial unless the Court, for good cause, orders that it be deferred for determination at the trial of the general issue or until after verdict, but no such determination shall be deferred if a party's right to appeal is adversely affected.

(h) Effect of determination. If the Court grants a motion based on a defect in the institution of the prosecution or in the indictment or information, it may also order that the defendant be continued in custody or that the defendant be released upon conditions for a specified time pending the filing of a new indictment or information. Nothing in this Rule shall be deemed to affect the provisions of any act of Congress relating to periods of limitations.

(i) Matters taken under advisement. When a judge takes any motion or other matter under advisement, the Clerk shall note on the docket the date on which the matter was taken under advisement. If within 30 days of such date a decision has not been rendered by the judge, the Clerk shall send notice of that fact to that judge and shall repeat such notice every 30 days thereafter until a decision is rendered. If no decision has been rendered within 60 days of the issuance of the 1st such notice, the Clerk thereafter shall so advise that judge and the Chief Judge. The Chief Judge may take any action deemed appropriate in order to cause the matter to be decided promptly.

Rule 48. Dismissal.

(a) By prosecutor.

(1) Information or complaint. The Attorney General or the United States Attorney or the Corporation Counsel may file a dismissal or nolle prosequi of an information or complaint and the prosecution shall thereupon terminate. A dismissal shall be without prejudice unless otherwise stated. Such a dismissal or nolle prosequi may not be filed during the trial without the consent of the defendant.

(2) Indictment. The Attorney General or the United States Attorney or the Corporation Counsel may by leave of court file a dismissal of an indictment and the prosecution shall thereupon terminate. Such a dismissal shall be without prejudice unless otherwise stated. Such a dismissal may not be filed during the trial without the consent of the defendant.

(b) By Court. If there is unnecessary delay in presenting the charge to a grand jury or in filing an information against a defendant who has been held to answer to the Court, or if there is unnecessary delay in bringing a defendant to trial, the Court may dismiss the indictment, information or complaint.

(c) Abandonment of prosecution. If any defendant charged with a criminal offense shall have been committed or held to bail to await the action of the grand jury and within 9 months thereafter

the grand jury shall not have taken action on the case, either by ignoring the charge or by returning an indictment, the prosecution of such charge shall be deemed to have been abandoned and the accused shall be set free or the accused's bail discharged, as the case may be, but the Court having jurisdiction to try the offense for which the person has been committed, when practicable and upon good cause shown in writing and upon due notice to the accused, may from time to time enlarge the time for taking action in such case by the grand jury.

Rule 49. Service and filing of papers.

(a) Service: When required. Written motions other than those which are heard ex parte, written notices, designations of record on appeal and similar papers shall be served upon each of the parties.

(b) Service: How made. Whenever under these Rules or by an order of the Court service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party personally is ordered by the Court. Service upon the attorney or upon a party shall be made in the manner provided in civil actions.

(c) Notice of orders. In all cases where a party or the party's attorney is not present, immediately upon the entry of an order made on a written motion subsequent to arraignment the Clerk shall mail to each party a notice thereof and shall make a note in the docket of the mailing. Lack of notice of the entry by the Clerk does not affect the time to appeal or relieve or authorize the Court to relieve a party for failure to appeal within the time allowed, except as permitted by the Rules of the District of Columbia Court of Appeals.

(d) Filing. Papers required to be served shall be filed with the Court. Papers shall be filed in the manner provided in civil actions.

(e) Communications by counsel to judge. Copies of all communications, memoranda and briefs submitted by counsel to a judge and relating to a proceeding pending before the judge shall be delivered to each of the parties.

Rule 49.1. Privacy protection for filings made with the Court.

(a) Redacted Filings. Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer identification number or driver's license or non-driver's license identification card number, the name of an individual known to be a minor child as that term is defined in D.C. Code § 16-2301 (3), a person's birth date, a debit card, credit card or other a financial-account number, or the home address of an individual, a party or nonparty making the filing may include only:

(1) the acronym "SS#", "TID#", "DL#, or NDL#" instead of the social-security number, taxpayer-identification number, driver's license number and non-driver's license identification card number, respectively ;

(2) the minor child's initials;

(3) the acronym "DOB" instead of the individual's birth date;

(4) the last four digits of a debit card, credit card, or other financial-account number; and

(5) the city and state of the home address.

(b) Exemptions from the Redaction Requirement. The redaction requirement does not apply to the following:

(1) a financial-account number or real property address that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;
(2) the record of an administrative or agency proceeding;
(3) the official record of a state-court proceeding;
(4) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed;
(5) a filing covered by Rule 49.1(c)(d);
(6) a pro se filing in an action brought under D.C. Code §§ 22-4135 or 23-110
(7) a court filing that is related to a criminal matter or investigation and that is prepared before the filing of a criminal charge or is not filed as part of any docketed criminal case;
(8) an arrest or search warrant; and
(9) a charging document and an affidavit filed in support of any charging document.

(c) Filings Made Under Seal. The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(d) Protective Orders. For good cause, the court may by order in a case:

(1) require redaction of additional information; or
(2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.

(e) Option for Additional Unredacted Filing Under Seal. A person making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

(f) Option for Filing a Reference List. A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(g) Waiver of Protection of Identifiers. A person waives the protection of Rule 49.1(a) as to the person's own information by filing it without redaction and not under seal.

Rule 50. [Omitted].

Rule 51. Exceptions unnecessary.

Exceptions to rulings or orders of the Court are unnecessary and for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the Court is made or sought, makes known to the Court the action which that party desires the Court to take or that party's objection to the action of the Court and the grounds therefor; but if a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice that party.

Rule 52. Harmless error and plain error.

(a) Harmless error. Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

(b) Plain error. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the Court.

Rule 53. Free press -- Fair trial.

(a) Disclosures by courthouse personnel. All courthouse supporting personnel, including among others, marshals, court clerks, law clerks, messengers and court reporters, shall not disclose to any person information relating to any pending criminal or civil proceeding that is not part of the public records of the Court without specific authorization of the Court, nor shall any such personnel discuss the merits or personalities involved in any such proceeding with any members of the public.

(b) Photographs, radio and television broadcasting, etc.

(1) In general. The taking of photographs, or radio or television broadcasting, or except with the approval of the Court the use of any mechanical recording device, shall not be permitted in any courtroom of this Court during the progress of judicial proceedings, or in any of the anterooms adjacent thereto, in any of the cellblocks, in the lobby, or in the corridors of the courthouse.

(2) Exception. The taking of photographs in any office or other room of the courthouse shall be only with the knowledge and consent of the official or person in charge of such office or room and of the person or persons photographed.

(c) Release of information by or opinions of counsel. Neither an attorney who has undertaken the representation of a defendant nor the prosecutor in a criminal case, whether the case is in progress or is imminent, shall release or authorize the release of information not in the public record for dissemination by any means of public communication which is likely to interfere with a fair trial or otherwise prejudice the due administration of justice. No statement by any such attorney may be so disseminated containing the attorney's opinion as to guilt or innocence, as to credibility of witnesses, as to motives of the other party, or as to similar matters bearing on the conduct of the litigation.

(d) Widely publicized or sensational cases. In a widely publicized or sensational criminal case, the Court on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused and of the government to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses and any other matters which the Court may deem appropriate in the administration of justice.

Rule 54. Application of terms.

As used in these Rules the term "state" does not include the District of Columbia. "Law" includes statutes and judicial decisions. "Act of Congress" includes any act of Congress locally applicable to and in force in the District of Columbia. "Superior Court" means the Superior Court of the District of Columbia. "District Court" includes all District Courts in the United States, Guam, the Virgin Islands, and Puerto Rico. "Civil action" refers to a civil action in the Superior Court. "Oath" includes affirmations. "Attorney for the government" means the Attorney General, an authorized assistant of the Attorney General, a United States Attorney, and an authorized assistant of a United States Attorney. "Prosecutor" means the United States Attorney for the District of Columbia or an assistant United States Attorney for the District of Columbia, the Corporation Counsel of the District of Columbia or an assistant Corporation Counsel of the District of Columbia, or an attorney employed, and who has entered an appearance on behalf of the United States or the district of Columbia in a criminal case or in an investigation being conducted by a grand jury. "Law enforcement officer" means an officer or member of the Metropolitan Police Department of the District of Columbia or of any other police force operating in the District of Columbia, or an investigative officer or agent of the United States. "Investigative or law enforcement officer" means any officer of the United States or of the District of Columbia who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in subchapter III of Chapter 5 of D.C. Code Title 23, and any attorney authorized by law to prosecute or participate in the prosecution of such offenses. The words "demurrer", "motion to quash", "plea in abatement", "plea in bar", and "special plea in bar", or words to the same effect, in any act of Congress shall be construed to mean the motion raising a defense or objection provided in Rule 12. The word "release" means any release secured under subchapter II of Chapter 13 of Title 23 of the D.C. Code. The word "detain", or any variation of such as "detained", means any detention under subchapter II of Chapter 13 of Title 23 of the D.C. Code. The word "district" means any federal judicial district other than the District of Columbia.

Rule 55. Records of the clerk.

(a) The clerk shall make entries in appropriate dockets and records of all papers and documents filed in the clerk's office and of all proceedings of the Court. The entry of an order or judgment shall show the date the entry is made.

(b) For any search for the criminal record of an individual, the clerk shall charge a fee of $ 10.00. The fee shall not apply to: an individual requesting a search for his or her own record; any governmental agency; or an attorney for or an employee of a non-profit organization located in the District of Columbia that provides legal services for indigent clients without fee or for a nominal processing fee or an attorney appointed pursuant to *D.C. Code § 11-2602* or *16-2304* or any individual who has been approved by the Court to proceed in forma pauperis who certifies that such a search is necessary pursuant to such an appointment.

Rule 55-I. Removal of records.

(a) Grounds for removal. No jacket, document, or record in any criminal case shall be removed from the Office of the Clerk except (1) when required for use before a division of this Court or a person to whom the case has been referred for consideration or (2) when ordered by a judge of this Court.

(b) By whom. A judge, the Clerk, the clerk's assistant, an attorney or party to the case, or a person designated by a judge may be permitted to remove a jacket, document, or record for the use required or ordered under paragraph (a).

(c) Physical limits. Except with the approval of a judge, no jacket, document, or record shall be taken from the courthouse by any person other than the Clerk or the clerk's assistant, who shall retain possession thereof.

(d) Receipt. In any case where the jacket, document, or record is removed by a person other than the Clerk or the clerk's assistant, a receipt shall be required.

(e) Return. Any jacket, document or record removed from the Office of the Clerk shall be returned immediately upon completion of the purpose for which it was removed. Such return shall be noted by the Clerk or the clerk's assistant on the receipt given under paragraph (d).

Rule 56. Clerk of the court.

The Clerk's Office of the Criminal Division shall be open for the transaction of business from 9:00 a.m. until 4:00 p.m. on all weekdays. In addition, the Criminal Finance Office shall be open on weekdays from 8:30 a.m. to 7:00 p.m. On Saturdays and legal holidays the Clerk's Office shall be open from 9:00 a.m. until noon and the Criminal Finance Office shall be open from 9:00 a.m. until noon or one hour after Court completes its session, whichever is later.

Rule 57. Rules of court.

(a) Applicability of Civil Division Rules. Of the Rules regulating practice in the Civil Division of the Superior Court, the following Rules shall apply to the Criminal Division: Rule 43-I (Record made in regular course of business; photographic copies); Rule 63-I (Bias and prejudice of a judge); Rule 101 (Attorneys); Rule 102 (Disbarments); Rule 103 (Employees not to practice law); and Rule 104 (Avoidance and resolution of conflicts in engagements of counsel among the courts in the District of Columbia).

(b) Procedure when there is no controlling law. The Court may regulate practice in any manner consistent with applicable law and these Rules. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in applicable law or these Rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

Rule 58. [Deleted].

Rule 59. Effective date.

These Rules take effect on February 1, 1971. They govern all criminal proceedings thereafter commenced and so far as just and practicable all proceedings then pending.

Rule 60. Title.

These Rules may be known as the Superior Court Rules of Criminal Procedure and may be cited as Superior Court Rules -- Criminal or as SCR -- Criminal.

Rule 100. Creation of Sections.

The Criminal Division shall include the following Sections: Assignment, District of Columbia, Traffic and Motions, and such other Sections as the Chief Judge shall establish. The duties of those Sections shall be performed by such judge or judges as shall be assigned thereto by the Chief Judge.

Rule 101. Duties and operation of the Assignment Section.

(a) Duties. The Calendar Control Judge who shall sit in the Assignment Section shall discharge on behalf of the Felony Branch and the Misdemeanor Branch of the Criminal Division the following duties, when applicable:

(1) Assign cases to other judges of the Criminal Division for trial, except as otherwise provided in these Rules;

(2) Grant or deny continuances, except as otherwise provided in these Rules;

(3) Conduct any other matters, including the holding of trials or hearings, should the judge's schedule permit.

(b) Assignment of cases upon the filing of an information. Except as otherwise provided in these Rules, cases prosecuted by the filing of an information, other than those to be prosecuted in the District of Columbia-Traffic Branch or the Tax Division, shall be assigned for trial by the judge sitting in the Assignment Section in the following manner:

(1) The Section shall convene promptly at 9:15 a.m.

(2) The calendar call shall begin with the government's "ready cases", and then proceed to a call of the entire calendar. Cases may be certified for trial even if the government's witnesses are not present, but are available on call within not more than 30 minutes. Such cases shall be certified to the Criminal Assignment Commissioner who shall recertify them to the judge sitting in the Assignment Section if the witnesses do not appear as represented.

(3) Defense attorneys shall be in the Assignment Section when their cases are called. No case may be certified unless the attorney and the attorney's client are present, except where the attorney has previously announced ready and has been certified for trial in another case. If an attorney is unable to be present in the Assignment Section because of the attorney's active engagement in trial or because of a required appearance in the United States District Court or an appellate court, the attorney shall leave a slip with the courtroom Clerk indicating where the attorney will be, when the attorney expects to return, and whether the attorney is ready for trial.

(4) When an attorney's 1st case is called, the attorney shall advise the Court of any other cases the attorney has on the calendar, so that the judge sitting in the Assignment Section can review the status of all such cases at the same time. So far as practicable, the calendar shall be printed, grouping all of an attorney's cases together, and posted in a conspicuous place outside the courtroom in which the Assignment Section is convened.

(5) Each morning 1 or more ready cases shall be certified directly to trial judges by the judge sitting in the Assignment Section.

(6) After 1 or more cases have been sent to each trial judge, the balance of ready cases shall be certified by the judge sitting in the Assignment Section to the Criminal Assignment Commissioner. All of an attorney's cases shall be sent to the same judge whenever possible. The Assignment Commissioner shall insure that at least 1 back-up case is waiting in each trial judge's courtroom at all times, unless the Commissioner is advised by the trial judge that the current case in trial or hearing is expected to last in excess of one-half of a trial day, or will carry over until the next day. The Assignment Commissioner shall periodically inform the judge sitting in the Assignment Section of the status of cases certified for trial.

(7) Attorneys shall report directly to the courtroom to which their cases have been assigned. If they wish to leave the courtroom, they must first make arrangements with that courtroom's Clerk. Attorneys whose cases have been certified to the Assignment Commissioner shall not leave the lawyer's lounge without the permission of the Assignment Commissioner.

Rule 102. Duties and operation of the District of Columbia Section.

(a) Duties. Subject to the provisions of paragraph (b), a judge or hearing commissioner designated by the Chief Judge sitting in the District of Columbia Section shall conduct proceedings, including non-jury trials, prosecuted in the name of the District of Columbia, except for (1) those cases joined for prosecution in another branch of the Criminal Division under Rule 1, (2) traffic cases which are not joined for prosecution with other cases in the District of Columbia Section, and (3) those cases which are to be conducted in the Tax Division.

(b) Operation.

(1) Time. The District of Columbia Section shall convene promptly at 10:00 a.m.

(2) Jury trial continuances. At arraignment, all cases in which a jury trial is demanded shall be continued for trial to a date on which, according to the Court's calendar of available continued jury trial dates, no more than the maximum permissible number of cases has already been set.

(3) Certification to Criminal Assignment Commissioner. All jury trials shall be certified to the Criminal Assignment Commissioner when ready. Defense attorneys shall be in the District of Columbia Section when their cases are called. No jury trial may be certified to the Criminal Assignment Commissioner unless the attorney and the attorney's client are present, except where the attorney has previously announced ready and has been certified for trial in another case.

Rule 103. Duties and operation of the Traffic Section.

(a) Duties. Subject to the provisions of paragraph (b), the Traffic Section shall conduct proceedings in traffic cases prosecuted in the name of the District of Columbia, except for those traffic cases which are joined for prosecution in another branch of the Criminal Division under Rule 1 or the District of Columbia Section under Rule 102.

(b) Operation.

(1) Initial call. At 9:30 a.m. the Clerk shall call all new and continued cases which are set for that time. The Clerk shall again make an initial call at 1:00 p.m. If both defendant and the police officer are present at either time they will be told to remain in Court until the case is called. If either defendant or police officer is not in Court, the party answering will be told to remain in Court until the case is called.

(2) Judges or hearing commissioners call. At or before 10:00 a.m. the judge or hearing commissioner shall make a 2nd call of cases which were initially called at 9:30 a.m. and in which either defendant or police officer failed to answer. The judge or hearing commissioner shall also make a 2nd call at 1:30 p.m. similar to the one made at 10:00 a.m. If the defendant fails to answer the 2nd call, the Clerk shall note the defendant's non-appearance and the judge or hearing commissioner shall authorize the issuance of a judicial summons or arrest warrant. If the police officer fails to answer the 2nd call but defendant answers, the case may be dismissed for want of prosecution. If the officer has checked in with the police liaison office the officer shall be deemed to have "answered".

(c) Order of calendar call.

(1) Morning call. After the judge or hearing commissioner has taken the bench at or before 10:00 a.m., cases shall be called in the following order:

(i) New or continued cases set for 9:30 a.m. in which defendant failed to answer at the 9:30 a.m. call.

(ii) New or continued cases set for 9:30 a.m. in which the police officer failed to answer at the 9:30 a.m. call.

(iii) New or continued lock-up, citation, and bond cases.

(iv) Trials of new and continued cases set for 9:30 a.m.

(2) Afternoon call. After the judge or hearing commissioner has taken the bench at 1:00 p.m., the cases shall be called in the following order:

(i) New or continued cases set for 1:00 p.m. in which the defendant has failed to answer at the 1:00 p.m. call.

(ii) New or continued cases set for 1:00 p.m. in which the police officer has failed to answer at the 1:00 p.m. call.

(iii) Trials of new or continued citation and bond cases.

(iv) Motions to set aside forfeitures of collateral.

(v) Trials of new and continued cases set for 1:00 p.m.

(d) Time of continued non-jury trials. All new and continued traffic cases are to be set for trial either at 9:30 a.m. or 1:00 p.m.

(e) Duties of traffic court judges and hearing commissioners.

(1) Trials. All new and continued cases shall, to the extent possible, be tried by the judge or hearing commissioner sitting in the Traffic Section on the day and time they are shown to be set for trial.

(2) Other duties. All new lock-up, citation, and bond cases involving traffic offenses shall be called in the Traffic Section for the purpose of appointment of counsel, disposition of preliminary matters, setting of trial date, and trial or certification to the Criminal Assignment Commissioner for trial in the Criminal Division.

(f) Presence of attorneys. Defense attorneys shall be in Court when their cases are called.

Rule 104. Operation of the Tax Division in criminal proceedings.

(a) Duties of the Deputy Clerk. Upon the filing of an information, the Deputy Clerk of the Tax Division shall in non-sequential order and at random assign the matter to a judge of the Tax Division. The Deputy Clerk shall thereupon notify all counsel of the assignment and the date and time at which arraignment shall be conducted.

(b) Arraignment. Arraignment shall be conducted on a date set by the judge within 2 weeks from the filing of the information.

Rule 105. Assignment of felony cases and related cases.

(a) Assignment process.

(1) Supervision. The Chief Judge, or such other judge as the Chief Judge may choose, shall direct by designated Court officers, the assignment and calendaring of felony and related cases.

(2) Assignment cards. The Criminal Clerk shall prepare a block of assignment cards each month from the list of judges assigned by the Chief Judge for trial duties in the Felony Branch. The order of judge's names within each block shall be non-sequential and at random and shall not be disclosed until assignment. Immediately after assignment, the case number shall be stamped on the assignment card which shall be preserved.

(3) Time of Assignment. Upon the return of an indictment, it shall be forthwith filed with the Criminal Clerk. Except as otherwise provided by this Rule, or by order of the Chief Judge or such other judge as the Chief Judge may choose, upon this filing, the Criminal Clerk shall promptly assign the matter to the judge whose name appears on the assignment card.

(b) Related cases.

(1) Definition. Criminal cases are deemed related when (i) a superseding indictment or information has been filed or (ii) more than 1 indictment or information is filed or pending against the same defendant or defendants. Notice of such relationship shall be given to the Criminal Clerk by the prosecutor at the time of return of the indictment.

(2) Assignment. (i) Whenever it appears that an indictment is filed with respect to an accused against whom a [an] indictment is already pending, the Criminal Clerk shall promptly assign the matter to the judge before whom the previous indictment is pending. (ii) Whenever it appears that an information is filed with respect to an accused against whom an indictment is already pending, the judge sitting in the Assignment Section, after conducting the arraignment, shall assign the matter to the judge before whom the indictment is pending. (iii) Whenever it appears that an indictment is filed with respect to an accused against whom an information is already pending, the Criminal Clerk shall assign the previously unassigned misdemeanor case to the judge assigned the felony case, except that no such misdemeanor case, without the consent of the defendant, shall be assigned within 5 days of trial to an individual judge of the Felony Branch. (iv) Subject to the provisions of (iii) above, if related cases have been assigned to different judges, counsel may make a motion for transfer of the subsequently filed case. Such motion shall be referred to the judge to whom the 1st felony case was assigned. If the motion is denied, the case shall be returned to the judge assigned to the subsequently filed case.

(c) Consolidation of cases. When a motion for the consolidation of cases is made, it shall be referred to the judge before whom the 1st felony case is pending. If such a motion is granted, the procedure thereafter shall be the same as for related cases.

(d) Dismissed cases. When a case previously assigned to an individual judge is dismissed, with or without prejudice, and an indictment or information is filed involving the same parties and relating to the same subject matter, the 2nd case shall be transferred to the Chief Judge or the Chief Judge's designee in the case of a felony, or to the judge sitting in the Assignment Section in the case of a misdemeanor, for consideration of reassignment to the judge to whom the original was assigned.

(e) Other transfers and reassignments. When reassignment of a case is necessitated by the death, retirement, resignation, incapacity or assignment to other duties of any judge, by appointment of a new judge or a visiting judge, or by any circumstances not otherwise provided for in these Rules, the Chief Judge or such other judge as the Chief Judge may choose, shall determine the necessity of such reassignment and by order effect such reassignment.

(f) Sanctions.

(1) Officers and employees. No Court officer or employee may reveal to any other person, other than the Chief Judge or such other judge as the Chief Judge may choose, the sequence of judges' names within each block of assignment cards. No Court officer or employee may number or assign any case other than in the manner provided or in the manner ordered by the Chief Judge or such other judge as the Chief Judge may choose. Any person violating this provision may be punished for contempt of Court.

(2) Others. No person may directly or indirectly cause, or procure or attempt to cause or procure, a Court officer or employee (i) to reveal to any person, other than the Chief Judge or such other judge as the Chief Judge may choose, the sequence of the judges' names within each block of assignment cards or (ii) to number or assign any case otherwise than as herein provided or as ordered by the Chief Judge or such other judge as the Chief Judge may choose. Any person violating this provision may be punished for contempt of Court.

(g) Scope. This Rule shall not apply to any prosecution which under Rule 1 is to be conducted in either the District of Columbia Traffic Branch or the Tax Division.

Rule 106. Special assignments.

For good cause shown, a case or cases may be assigned specially to a single judge for all purposes at any time during the litigation by order of the Chief Judge entered (1) sua sponte or (2) upon recommendation of the Calendar Control Judge on the judge's own motion or on written request of any party or (3) upon a joint request of all parties. The Chief Judge may delegate the authority under this Rule to the Calendar Control Judge, except that such Judge may make a special assignment only to a judge then currently assigned to the trial of Criminal Division cases. The judge so assigned shall be responsible for scheduling and conducting all further proceedings in the case.

Rule 107. Notice of assignments, transfers and reassignments.

(a) Assignments. The Criminal Assignment Commissioner shall give notice to the judge involved and to all counsel of the assignment (1) of all felony cases, including protracted felony cases, and (2) of all related cases. The notice shall include, where applicable, the date and time at which arraignment shall be conducted.

(b) Transfers and reassignments. Upon the transfer and reassignment of any case notice shall be given to the judges involved and to all counsel.

Rule 108. Felony case arraignment.

An arraignment in a felony case shall be conducted within 2 weeks from the return of indictment. The next subsequent appearance of the defendant and action in the case shall be scheduled at arraignment. If the judge to whom the case is assigned is unavailable, the arraignment may be conducted by a substitute judge.

Rule 109. Arraignments in misdemeanor cases and presentments.

(a) Duties. The Chief Judge, or such other judge or judges, or hearing commissioners as the Chief Judge may assign shall discharge on behalf of the Felony Branch and the Misdemeanor Branch of the Criminal Division the following duties, when applicable:

(1) Conduct presentments where the case, prior to the return of an indictment or the filing of an information, is prosecuted by formal complaint;

(2) Conduct arraignments where the case is prosecuted by information, except as otherwise provided for in Rules 102, 103, 104, and 108;

(3) Upon arraignment before the judge or hearing commissioner schedule the case for trial;

(4) Schedule preliminary hearings, including not otherwise scheduled or assigned pretrial detention hearings under Rule 46-I;

(5) Appoint counsel from a list of attorneys prepared under the authority of Section 302(b) of the District of Columbia Court Reorganization and Criminal Procedure Act of 1970, Public Law 91-358 [§ 1-2702, D.C. Code, 1981 Ed.];

(6) Set conditions of release or detention in all cases prior to the filing of an indictment or the commencement of trial;

(7) Except as otherwise provided in these Rules, grant or deny continuances; and

(8) Entertain motions for mental observation in accordance with the procedures set forth in paragraph (c) of this Rule. Motions for mental observation made after arraignment or presentment shall come before the judge to whom the case has been assigned or, if not so assigned, before the judge assigned to hear criminal motions.

(9) Conduct any other matters, including the holding of trials or hearings, as time permits.

(b) Operation. Presentments and arraignments shall commence at 1:00 p.m. The order of call shall insofar as practicable, be as follows:

(i) Attorneys who are scheduled for an afternoon trial or hearing;

(ii) Felonies;

(iii) Misdemeanors.

(c) Procedures for mental examination. Repealed. See now Rule 120.

Rule 110. Place of preliminary hearings including pretrial detention hearings.

Except for those preliminary hearings which may be held by the judge or magistrate judge sitting in the Assignment Section, all preliminary hearings, and pretrial detention hearings pursuant to Rule 46-I, shall be held commencing at 1:30 p.m. before a judge or judges or magistrate judges designated by the Chief Judge other than the judge or magistrate judge sitting in the Assignment Section. If, as of the date set for a preliminary hearing, the government determines to enter a nolle prosequi on the felony charge or charges and to proceed with a misdemeanor charge, or charges, the nolle prosequi shall be entered and the misdemeanor arraignment held before the judge or magistrate judge conducting preliminary hearings.

Rule 111. Continuances.

(a) By whom determined prior to trial.

(1) Misdemeanor Branch cases. Except as otherwise provided in this Rule, cases, in which a continuance is requested before trial, shall be directed to the judge sitting in the Assignment Section. The judge to whom the case has been certified for trial may, if the judge is of the opinion that a continuance is necessary to prevent manifest injustice, recertify the case to the judge sitting in the Assignment Section with a recommendation for continuance.

(2) District of Columbia-Traffic Branch cases. In any case pending in the District of Columbia Section or Traffic Section or certified to a trial court, only the judges presiding in those sections may grant a continuance prior to the start of trial. The judge to whom the case has been certified for trial may, if the judge is of the opinion that a continuance is necessary to prevent manifest injustice, recertify the case to the judge sitting in the Assignment Section with a recommendation for continuance.

(3) Felony Branch and other individually assigned cases. In any case in the Criminal Division which has been assigned under Rules 105, 106, 107, or in any case in the Tax Division, only the judge to whom such case has been assigned, reassigned, or transferred may grant a continuance prior to trial.

(b) Motions.

(1) In general. Motions for continuances of hearings or trials shall be in writing on a form provided by the Clerk's Office, served on the opposite party, and filed at the earliest practicable date with the Clerk of the appropriate division unless the Court otherwise directs. Such motions if contested shall be calendared for hearing as expeditiously as possible. Motions, whether or not contested, shall contain reasons therefor and at least 1 date, not on the stop list, to which the parties agree the case may be continued if the motion is granted.

(2) Exception. The determination of an uncontested motion for continuance may be made by the judge without counsel present. It shall be the obligation of any counsel not present to determine from the Clerk of the appropriate division whether the motion was granted and, if so, the new date and time of the hearing or trial.

(c) "Two-day rule". Except in extraordinary or unforeseen circumstances, no continuances shall be granted in any case unless requested at least 2 days before the scheduled date of trial.

Rule 112. Continuing effect of praecipe submitted by defense counsel.

A completed praecipe shall be entered by defense counsel, whether appointed or retained, in every criminal case within 1 Court day of the attorney's appointment or retention. Such praecipe shall state the attorney's name, address, telephone number, and attorney registration number. No attorney may withdraw an appearance except by leave of court after notice served the attorney's client.

Rule 113. Witness fees.

(a) Amounts.

(1) Fees. Except as hereinafter provided, each witness attending Court or a deposition pursuant to any rule or order of a court shall receive $ 40 for each day's attendance and for the time necessarily occupied in going to and returning from the same. An expert witness shall receive such amount as the expert witness is entitled to by law. A witness detained for want of security for the witness's appearance shall be entitled to $ 1 for each day's attendance. No witness fee shall be paid to an employee of the United States or any agency thereof or of the District of Columbia who has been called as a witness on behalf of the United States or the District of Columbia.

(2) Travel allowance. Except as hereinafter provided, each witness shall receive a per mile travel allowance as provided by D.C. Code §15-714 for going from and returning to the witness's residence. Regardless of the mode of travel employed by the witness, computation of mileage shall be made on the basis of a uniform table of distances as provided under 28 U.S.C. §1821. A witness who is an employee of the United States or any agency thereof and is called to testify in the witness's official capacity or produce an official record shall be paid a travel allowance fixed by applicable statutes and regulations. No witness residing in the District of Columbia shall be entitled to a

travel allowance. No witness detained for want of security for the witness's appearance shall be entitled to a travel allowance.

(3) Subsistence. Except as hereinafter provided, a witness attending Court or a deposition at a place so far removed from the witness's residence as to prohibit return thereto from day to day shall be entitled to an additional allowance fixed by statute for expenses of subsistence including the time necessarily occupied in going to and returning from the place of attendance. A witness detained in prison for want of security for the witness's appearance shall be entitled to the witness's subsistence. An officer or employee of the United States or any agency thereof summoned as a witness on behalf of the United States shall receive a per diem allowance in lieu of subsistence. Such per diem shall be fixed at a rate prescribed by law.

(b) Payment from public funds. No witness entitled to any payment under paragraph (a) shall be paid from public funds except upon certification of the witness that the witness was compelled by subpoena to attend as a witness on behalf of a defendant unable to pay or was present pursuant to the direction of the Court or prosecutor, in a specified pending criminal case and that the witness did attend. Such certification shall be endorsed by the Court or by the counsel of record issuing the subpoena or direction and shall be submitted to the Clerk of the Court for certification. The Executive Officer upon submission of the endorsed and verified certification shall make payment by cash or check.

(c) No payment of fee or allowance after voluntary appearance. No person who appears in Court for a judicial proceeding or at a deposition shall be paid a fee or allowance unless subpoenaed or present pursuant to direction of the Court or prosecutor.

(d) One fee rule. No person under subpoena to attend in a number of pending criminal cases shall be permitted to receive more than 1 fee or allowance for attendance on any 1 day.

(e) Construction. This Rule shall not be construed to supersede or conflict with any statute of the United States or regulation promulgated thereunder or any statute of the District of Columbia.

Rule 114. Indictable misdemeanors.

Whenever a defendant is charged with an indictable misdemeanor, all Rules and procedures applicable to felonies shall pertain thereto.

Rule 115. Practice by attorneys not members of the Bar of the District of Columbia.

An attorney who is a member in good standing of the bar of the highest court of any state of the United States, may appear and participate in the Criminal Division in a particular case by leave of court provided that the attorney has complied with the requirements of District of Columbia Court of Appeals Rule 49(c).

Rule 116. Bonds and sureties.

(a) Authorization of sureties.

(1) By Court order. Except by Court order no person shall be authorized to engage in the bonding business in criminal cases in this Court. No order of authorization shall be entered until such application and such supporting documents as are hereinafter required shall have been filed and the approval by this Court shall have been noted thereon.

(2) Contents of application. Every individual proposing to engage in the bonding business in criminal cases in this Court shall file with the Court a written application which shall set forth the following information and statements under oath:

(i) A listing of real estate owned by the applicant in the District of Columbia. The listing shall state with respect to each parcel: The street address, lot and square number, the current assessed value, the date and from whom title was acquired, the purchase price whether paid in cash or otherwise, the liber and folio of the land records of said District recording the deed or deeds thereto; that the property is not in any way encumbered; whether the property is improved and description of any improvements granted; if married, the applicant shall fully disclose the nature and extent of the spouse's title or interest in any or all parcels of real estate listed; and an Abstract of Title, establishing clear and unencumbered Title to such real estate;

(ii) The amount of the applicant's unsecured indebtedness and obligations, together with a prepaid request to a Credit Bureau specified by the Court for a full Credit Report to be mailed by the Bureau directly to the Court;

(iii) Whether the applicant is, or has been, in default in the payment of forfeited bail bond or recognizance in any court in the District of Columbia, the amount of bail bond or recognizance on any default recited, the date of forfeiture, the court, title and number of the cause in which such forfeiture was declared;

(iv) Whether the applicant has ever been arrested, charged or convicted of any offense;

(v) Proof of applicant's good moral character, attested by the statements of at least 2 residents of the District of Columbia not related to the applicant, and who shall so certify;

(vi) A declaration by the applicant that the applicant will in all respects abide by the terms and provisions of these Rules and Chapter 11 of Title 23 of the D.C. Code;

(vii) A listing of the name, age and residence of each and every person authorized to represent the applicant as agent, clerk or representative in the bonding business, accompanied by an affidavit from each person listed, declaring that the person will in all respects abide by the terms and provisions of these Rules and Chapter 11 of said Title 23;

(viii) Each person holding a power of attorney from an authorized individual surety shall file a duplicate original copy thereof with the Clerk of this Court, together with the person's affidavit stating whether the person has ever been arrested, charged or convicted of any offense, accompanied by the written statement of at least 2 residents of the District of Columbia who certify to the agent's good moral character and that they are not related to the said surety or agent;

(ix) The application shall also recite the following declaration to which the applicant shall fully agree and subscribe:

"In the event this application is approved, I will not sell, convey, mortgage, or otherwise encumber any of the real estate listed herein without first obtaining leave of court, and I do hereby irrevocably stipulate and agree that any person, company or corporation may advise the Clerk of this Court of any information with respect to any sale, conveyance, mortgage, encumbrance or title examination which affects the real estate listed in this application; and, I hereby agree that if this application is approved, any and all property listed herein is to be held to satisfy any unpaid forfeiture of any bond or bonds written by me during the period of my authorization, and the order granting this application shall constitute a lien against all of the real estate involved herein, for the purpose of satisfying any forfeiture which may hereafter be declared against me, either in this Court or in the United States District Court for the District of Columbia; and it is further agreed that this lien will be filed with the Recorder of Deeds of the District of Columbia, upon the granting of this application and continue as a lien on such property until duly released by the court. If so released, the Court could cancel the authority granted pursuant to this Application."

(3) Date of filing. An application containing like statements shall be filed on or before the 10th day of January of each 2nd year thereafter, or oftener if required by the Court, by each individual surety desiring to continue in said business, which application must receive the approval of the Court before the surety shall be entitled to continue to appear as surety on bonds or recognizances in this Court.

(4) Further affidavits. With each application for renewal there shall also be filed an affidavit to the effect that since the surety's previous qualifications the surety has in all respects abided by the terms and provisions of these Rules and Chapter 11 of said Title 23, together with a certificate of the Clerk of this Court wherein it is stated that the Clerk has examined the records of the applicant and found them to be in good order as to form.

(5) Other requirements. The original application of every individual proposing to engage in the bonding business, and every application for renewal of authority to continue herein, shall state the aggregate amount of bonds or recognizance in any court of the District of Columbia upon which such person is surety.

(6) Fingerprinting. The applicant shall submit to the taking of the applicant's fingerprints by the Clerk of this Court, as shall each person authorized to represent the applicant as agent, clerk or representative in the bonding business. On all renewals, the Clerk of the Court, with the approval of the Chief Judge, may waive the requirement for refingerprinting.

(b) Scope and suspension of authorization.

(1) Monetary limit on authorization. Except as otherwise limited herein, the authorization by this Court shall be effective so long as the aggregate penalties of the bonds written thereunder shall not exceed 3 times the amount of the current assessed value of the real estate listed. Provided, however, that when 2 or more sureties join in the writing of a single bond, the penalty of the bond shall be prorated between the several sureties, either equally or on the same proportionate basis as the sureties participate in the writing of the bond, as the case may be.

(2) Revocation and suspension of authority. Any authorization given pursuant to these Rules may be revoked for good cause shown after notice and hearing at any time by this Court or any

judge thereof. When it appears to the Court that the public interest so requires, any authorization given pursuant to these Rules may upon the order of any 3 judges of the Court be suspended prior to hearing upon the issue of good cause for a period not exceeding 60 days.

(3) Suspension due to forfeiture. Whenever any forfeiture is declared under any bond in any court in the District of Columbia, the authority granted by this Court to the authorized surety thereon shall be automatically suspended 14 days after such forfeiture is declared until the said forfeiture is satisfied in full, or until further order of this Court.

(4) Suspension on sale of listed property. Any person engaged in the business of executing bonds for compensation in this Court, who, after having filed with the Clerk of the Court the application required by these Rules, shall sell, convey, mortgage or otherwise encumber any of the real estate listed in the application, shall be suspended from the executing other or further bonds until the further order of the Court unless the person forthwith reports the said transaction to the Court and the person's limit of liability shall be correspondingly reduced.

(5) Suspension due to activities besides bonding. Any person engaged in the business of executing bonds for compensation in this Court who shall appear in any cause before the Court, the Office of the United States Attorney, or the Office of the Corporation Counsel, in a representative capacity, except for the purpose of discharging the person's duties as a surety in said cause, shall be suspended from executing other or further bonds until the further order of this Court.

(6) Suspension due to excess commission fees. Any surety who shall charge and receive a commission, fee or other remuneration in excess of $ 10 per $ 100 of any bond executed by the surety in this Court shall be suspended from writing other or further bonds until the further order of this Court.

(7) Suspension for procuring business for an attorney. Any surety who procures or assists in procuring or attempts to procure the retention or employment of any attorney to represent any person charged with an offense cognizable in this Court, or solicits or receives or enters into any agreement to receive any fee, commission money, property or other things of value for procuring or assisting or attempting to procure the retention or employment of any attorney to represent any person charged with an offense cognizable in this Court, shall be suspended from executing other or further bonds until the further order of this Court.

(8) Suspension for loitering to solicit business. Any surety, the surety's agents or employees who are guilty of loitering in or about or in the vicinity of any place where persons in the custody of law are detained, or of this Court, for the purpose of soliciting bonds or who shall obtain a bond through such loitering shall be suspended from executing any other or further bonds until the further order of this Court.

(9) Suspension for procuring business in certain instances. Any surety who, either directly or indirectly, gives, donates, lends, contributes, or promises to give, donate, lend, or contribute anything of value whatsoever to any attorney at law, police officer, deputy United States Marshal, jailer, probation officer, clerk, or other attache of a criminal court, or public official of any character, for procuring or assisting in procuring any person to employ the surety to execute as surety any bond for compensation in any criminal case shall be suspended from executing other or further bonds until the further order of this Court.

(c) Duties of the surety.

(1) Maintenance of office. Each authorized bondsman shall, at all times, maintain an office and telephone, for the transaction of business, in the District of Columbia.

(2) Records. Any surety authorized under these Rules shall keep an accurate record of each and every bond upon which the surety appears as surety in this Court, said record to be available for inspection upon demand by this Court, or any designated representative thereof, or any designated representative of any law enforcement agency of the District of Columbia; such record to include:

(i) The full name and address of the defendant for whom the bond is executed and the full name and address of the defendant's employer, if any;

(ii) The offense with which the defendant is charged;

(iii) The name of the court or officer authorizing the defendant's admission to bail;

(iv) The amount of the bond;

(v) The name of the person who called the surety, if other than the defendant;

(vi) The amount of the surety's charge for executing the bond;

(vii) The full name and address of the person to whom the surety presented the bill for the charge;

(viii) The full name and address of the person paying the charge; and

(ix) The manner of payment of the charge.

A separate like record shall be kept of all other bonds written by any surety so authorized, which shall likewise be available for inspection upon demand by this Court.

The records which the authorized surety is required to maintain shall be retained for a period of at least 3 years; the said records shall be submitted to the Clerk of this Court for examination and report at a reasonable time prior to the filing of an application for renewal.

(3) Obtaining release of the defendant. After the Court has fixed the amount of the bond, it shall be the duty of the surety who agrees to write the bond to obtain a release of the defendant from the Clerk.

(4) Continuing obligation. Any bond authorized by a judge of the Court or an official authorized to take bonds pursuant to paragraph (d)(2) of this Rule shall be a continuing bond and shall obligate the surety until final disposition of the charge by this Court or by the United States District Court for the District of Columbia, provided, however, that a surety may be relieved of the continuing obligation upon a proper showing made by written application. Any obligation of a surety may be appropriately reduced whenever a charge against a defendant is reduced or whenever 1 or more charges are dropped from the original charges.

(d) Duties of the Clerk and Marshal.

(1) Schedule of bonds and collateral security. From time to time a schedule shall be prepared by the Clerk of bonds and collateral security to be taken from persons charged with offenses cognizable in this Court for their appearance for trial or for further hearing. The bonds and collateral security provided in such schedule shall be subject to change in individual cases by any judge before whom a case may be pending.

(2) Substitute clerk. The judges of the Superior Court shall appoint officials of the Metropolitan Police Department of the District of Columbia to act as clerks of this Court with authority to take bonds or collateral security in accordance with the schedule prepared and adopted by the Court from persons charged with any offense cognizable in the Court at all times when the Clerk's Office is not open and its clerks accessible. Officials so appointed shall have such other authority and be subject to the limitations provided by *D.C. Code § 23-1110*.

(3) Release of defendant by Clerk. After the Court has fixed the amount of a bond, any release of the defendant given by the Clerk to the surety to write the bond shall direct the Marshal to bring the defendant to the Clerk. After the Clerk has determined that the surety is authorized to execute the bond, the bond shall be executed by both the defendant and surety, and the Marshal shall then release the defendant into the custody of the surety.

(4) Custody on increased charges or conditions. The defendant shall be taken into custody and a new bond shall be required whenever (i) the amount of the bond is increased, (ii) the charge is increased from a misdemeanor to a felony, or (iii) 1 or more additional charges are added to the original charge.

(5) Limit on acceptance of obligation. No single bond or recognizance shall be taken or approved which obligates the surety in an amount exceeding the current assessed value of the surety's listed real estate.

(6) Liaison with District Court. It shall be the duty of the Clerk of this Court to maintain close liaison with the Clerk of the United States District Court for the District of Columbia on all matters relating to sureties and their operations.

(e) [Deleted].

(f) Corporate sureties.

(1) Terms and conditions. Bonds, undertakings or recognizances in criminal cases may be accepted from corporations authorized by Court order to engage in the business of acting as surety under the same terms and conditions as are now required by this Rule and practices in this Court for individuals.

(2) Exception. Corporate sureties holding authority from the Secretary of the Treasury to do business in the District of Columbia and having a process agent therein shall be excused from compliance with the provisions of paragraph (a)(2) applicable to corporations, provided their agents and employees holding power of attorney to act in a representative capacity for them in this Court shall have complied with paragraph (2)(d), (e) and (f).

(g) Private sureties. Any person proposing to go on bond without compensation for same shall satisfy the Clerk of the Court that (1) said person is of good moral character and standing in the community; (2) the real estate offered as bond is free of any mortgages, liens or encumbrances of any kind, is located within the District of Columbia, disclosing the nature and extent of the interest of anyone, other than the person in whose name the real estate is assessed, in any or all of the parcels so offered; and (3) shall exhibit a certification from the Assessor's Office of the District of Columbia, indicating the square and lot numbers, street address, current assessed value, and in whose name the property is assessed.

(h) Forfeiture of bail.

(1) Declaration. If there is a breach of condition of a bond, the Court shall declare a forfeiture of the bail.

(2) Setting aside. The Court may direct that a forfeiture be set aside, upon such conditions as the Court may impose, if it appears that justice does not require the enforcement of the forfeiture. No forfeiture may be set aside in the case of a defendant who has failed to appear except upon the approval of the judge who originally imposed the forfeiture.

(3) Enforcement. When a forfeiture has not been set aside, the Court shall on motion enter a judgment of default and execution may issue thereon. By entering into a bond the obligors submit to the jurisdiction of the Court and irrevocably appoint the Clerk of the Court as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the Court prescribes may be served on the Clerk of the Court, who shall forthwith mail copies to the obligors at their last known addresses.

(4) Remission. After entry of such judgment, the Court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in subparagraph (2) of this section.

(i) Exoneration. When the condition of the bond has been satisfied or the forfeiture thereof has been set aside or permitted the Court shall exonerate the obligors and release any bail. A surety may be exonerated by a deposit of cash in the amount of the bond or by a timely surrender of the defendant into custody.

Rule 117. Magistrate judges.

(a) Assignment of duties. Magistrate judges appointed pursuant to the rules of this Court, when specifically designated by the Chief Judge, may perform the duties specified in this Rule and such other functions incidental to these duties as are consistent with the rules of the Superior Court and the Constitution and laws of the United States and of the District of Columbia.

(b) Pretrial proceedings.

(1) Determining pretrial release or detention. A person accused of committing a criminal offense in the District of Columbia may be brought before a magistrate judge. The magistrate judge shall determine conditions of release and pretrial detention pursuant to these rules and Title 23 of the District of Columbia Code. Review of the magistrate judge's determination of conditions of release may be made sua sponte and shall be made, upon motion, by the judge to whom the case is assigned. Where the case has not been assigned to a judge at the time the motion is filed, review shall be made by a judge to whom the case is assigned for purposes of review.

(2) Conducting preliminary examinations. A magistrate judge may conduct preliminary examinations in all criminal cases, pursuant to SCR Crim 5, to determine if there is probable cause to believe that an offense has been committed and that the accused committed it.

(3) Other duties. The magistrate judge may appoint counsel for indigent defendants in any criminal action, assign trial dates or certify an action for disposition before a judge, and rule on motions to continue a trial date. In addition, the magistrate judge may issue a judicial summons or warrant, pursuant to SCR Crim 9, for a defendant's failure to appear in Court.

(c) Hearing of certain non-jury matters. Upon consent of the parties, a magistrate judge may make findings and enter final orders or judgments in any criminal action, other than a trial by jury, in which (1) the maximum confinement provided by law is 180 days or less and the maximum fine provided by law for each offense does not exceed $ 1,000, or (2) the accused is charged with any offense heard in the District of Columbia and Traffic calendars of the Criminal Division. Prior to the commencement of any such proceeding, the magistrate judge shall advise the defendant that the defendant may not appeal to the District of Columbia Court of Appeals without first bringing the appeal to a judge of the Superior Court within 10 days after a final order of judgment has been entered.

(d) Acceptance of guilty pleas and imposition of sentence. A magistrate judge may, with the consent of the parties, accept a defendant's plea of guilty or nolo contendere and impose sentence in any criminal matter in which the maximum confinement provided by law for each offense is 180 days or less and the maximum fine provided by law does not exceed $ 1,000 and all actions heard in the District of Columbia and Traffic Calendars of the Criminal Division.

(e) Notification of right to appeal. After pronouncing sentence in a case which has gone to trial, the magistrate judge shall advise the defendant of the defendant's right to seek a review by a Superior Court judge of any final order or judgment entered or made by the magistrate judge and that any claim of error not raised before a Superior Court judge may not ordinarily be raised in a subsequent appeal which the defendant is otherwise entitled to make to the District of Columbia Court of Appeals. Furthermore, the magistrate judge shall advise the defendant of the right of a person who is unable to pay the cost of an appeal to apply for leave to appeal in forma pauperis. There shall be no duty on the magistrate judge to advise the defendant of any right to appeal after sentence is imposed following a plea of guilty or nolo contendere.

(f) Conducting initial probation revocation hearings. A magistrate judge may conduct initial probation revocation hearings in all criminal cases, pursuant to SCR Crim 32.1, to determine if there is probable cause to hold the probationer for a final revocation hearing.

(g) Review of magistrate judge's order or judgment; appeal.

(1) Upon Motion. With respect to proceedings and hearings under paragraphs (b)(2), (c), (d) and (f) of this Rule, a review of the magistrate judge's order or judgment, in whole or in part, shall be made by a judge designated by the Chief Judge upon motion of a party, which motion shall be filed and served within 10 days after service of the order or judgment upon the party, or, if the magistrate judge order or judgment was stated on the record, within 10 days thereafter. If the defendant is incarcerated as a result of the magistrate judge's judgment, the case shall be assigned for review within 1 court day. The motion for review shall designate the order, judgment, or part thereof, for which review is sought, shall specify the grounds for objection to the magistrate judge's order, judgment, or part thereof, and shall include a written summary of the evidence presented before the magistrate judge relating to the grounds for objection. Within 10 days after being served with said motion, a party may file and serve a response, which shall describe any proceedings before the magistrate judge which conflict with or expand upon the summary filed by the moving party. The judge designated by the Chief Judge shall review those portions of the magistrate judge's order or judgment to which objection is made. The judge may decide the motion for review with or without a hearing and may affirm, reverse, modify, or remand, in whole or in part, the magistrate judge's order or judgment and enter an appropriate order or judgment.

(2) On initiative of the Court. Not later than 30 days after entry of a magistrate judge's order or judgment pursuant to paragraphs (b)(2), (c), (d) or (f) of this Rule, the judge designated by the Chief Judge may sua sponte review said order or judgment in whole or in part. After giving the parties due notice and opportunity to make written submissions on the matter, the judge, with or without a hearing, may affirm, reverse, modify, or remand, in whole or in part, the magistrate judge's order or judgment.

(3) Stay of execution; release pending review. Upon the filing of a motion for review pursuant to subparagraph (g)(1) of this Rule, execution of a judgment of conviction entered by a magistrate judge may be stayed in the same manner as on appeal from a judgment of the Superior Court to the District of Columbia Court of Appeals. During the pendency of a motion for review, the defendant may be released by the magistrate judge or, on motion, by the reviewing judge upon a showing by clear and convincing evidence that the defendant is not likely to flee or pose a danger to any other person or to the property of others and that the defendant's motion for review presents a substantial question of law or fact. Upon such findings, the judge or magistrate judge shall treat the defendant in accordance with the provisions of *D.C. Code § 23-1321*.

(4) Extension of time to file motion for review. Upon a showing of excusable neglect and notice to the parties, the judge designated by the Chief Judge pursuant to subparagraph (g)(1) of this Rule may, before or after the time prescribed by subparagraph (g)(1) has expired, with or without motion, extend the time for filing and serving a motion for review of a magistrate judge's order or judgment for a period not to exceed 20 days from the expiration of the time otherwise prescribed by subparagraph (g)(1).

(5) Appeal. An appeal to the District of Columbia Court of Appeals may be made only after a judge of the Superior Court has reviewed the magistrate judge's judgment or order pursuant to paragraph (g) of this Rule.

(h) Contempt of Court. A magistrate judge may cite an individual for contempt committed in the presence of the magistrate judge. The magistrate judge shall thereafter certify the contempt proceeding for hearing and disposition before a judge pursuant to SCR Crim 42(b).

Rule 118. Sealing of arrest records.

(a) Motion for sealing and declaratory relief. Any person arrested for the commission of an offense punishable by the District of Columbia Code, whose prosecution has been terminated without conviction and before trial, may file a motion to seal the records of the person's arrest within 120 days after the charges have been dismissed. For good cause shown and to prevent manifest injustice, the person may file a motion within 3 years after the prosecution has been terminated, or at any time thereafter if the government does not object. As to arrests occurring on or after July 19, 1979, but before the Adoption of the Rule, a motion may be filed within 120 days after the adoption of this Rule. The motion shall state facts in support of the movant's claim and shall be accompanied by a statement of points and authorities in support thereof. The movant may also file any appropriate exhibits, affidavits, and supporting documents. A copy of the motion shall be served upon the prosecutor. The fee for filing a motion under this Rule shall be $ 20.00.

(b) Response by prosecutor. If the prosecutor does not intend to oppose the motion, the prosecutor shall so inform the Court and the movant, in writing, within 30 days after the motion has been filed. Otherwise, the prosecutor shall not be required to respond to the motion unless ordered to do so by the Court, pursuant to paragraph (c) of this Rule.

(c) Initial review by Court; summary denial; response by prosecutor. If it plainly appears from the face of the motion, any accompanying exhibits and documents, the record of any prior proceedings in the case, and any response which the prosecutor may have filed, that the movant is not entitled to relief, the Court, stating reasons therefore on the record or in writing, shall deny the motion and send notice thereof to all parties. In the event the motion is not denied, the Court shall order the prosecutor to file a response to the motion, if the prosecutor has not already done so. Such response shall be filed and served within 60 days after entry of the Court's order. The response shall be accompanied by a statement of points and authorities in opposition, and any appropriate exhibits and supporting documents.

(d) Court's determination of whether to hold a hearing. Upon the filing of the prosecutor's response, the Court shall determine whether an evidentiary hearing is required. If it appears that a hearing is not required, the Court shall enter an appropriate order, pursuant to paragraph (f) of this Rule. If the Court determines that a hearing is required, one shall be scheduled promptly.

(e) Determination of motion. If a hearing is held, hearsay evidence shall be admissible. If, based upon the pleadings or following a hearing, the Court finds by clear and convincing evidence that the offense for which the movant was arrested did not occur or that the movant did not commit the offense, the Court shall order the movant's arrest records retrieved and sealed pursuant to paragraph (f).

(f) Findings and order; declaratory relief.

(1) Order denying motion. If the Court denies the motion, it shall issue an order and shall set forth its reasons on the record or in writing.

(2) Order granting motion. If the Court grants the motion, it shall issue an order, in writing, pursuant to subparagraphs (f)(2)(A), (B), and (C) of this Rule.

(A) Retrieval of arrest records and purging of computer records. The Court shall order the prosecutor to collect from the prosecutor's office, the law enforcement agency responsible for the arrest and/or the Metropolitan Police Department all records of the movant's arrest in their central files, including without limitation all photographs, fingerprints, and other identification data. The Court shall also direct the prosecutor to arrange for the elimination of any computerized record of the movant's arrest. However, the Court shall expressly allow the prosecutor and the law enforcement agency to maintain a record of the arrest so long as the record is not retrievable by the identification of the movant. The Court shall also order the prossecutor [prosecutor] to request that the law enforcement agency responsible for the arrest retrieve any of the aforementioned records which were disseminated to pretrial services, corrections, and other law enforcement agencies, and to collect these records when retrieved.

(B) Requirement that arrest records be sealed. The Court shall order the prosecutor to file with the Clerk of the Court, within 60 days, all records collected by the law enforcement agency and in the prosecutor's own possession. These records shall be accompanied by a certification that to the best of the prosecutor's knowledge and belief no further records exist in the prosecutor's own pos-

session and in the possession of the law enforcement agency's central records files or those of its disseminees, or that, if such records do exist, steps have been taken to retrieve them. The Court shall order the Clerk to collect all Superior Court records pertaining to the movant's arrest and cause to be purged any computerized record of such arrest. However, the Court shall expressly allow the Clerk to maintain a record of the arrest so long as the record is not retrievable by the identification of the movant. The Court shall also order the Clerk to file under seal all Superior Court records so retrieved, together with all records filed by the prosecutor pursuant to this paragraph, within 7 days after receipt of such records.

(C) Declaratory relief. The Court shall summarize in the order the factual circumstances of the challenged arrest [and] any post-arrest occurrences it deems relevant, and, if the facts support such a conclusion, shall rule as a matter of law that the movant did not commit the offense for which the movant was arrested or that no offense had been committed. A copy of the order shall be provided to the movant or his or her counsel. The movant may obtain a copy of the order at any time from the Clerk of the Court, upon proper identification, without a showing of need.

(g) Sanitization of records involving co-defendants. In a case involving co-defendants in which the Court orders the movant's records sealed, the Court may order that only those records, or portions thereof, relating solely to the movant be sealed. The Court may make an in camera inspection of these records in order to make this determination. If practicable, the Court may order those records relating to co-defendants returned to the prosecutor, with all references to the movant sanitized.

(h) Indexing and access to sealed records. The Clerk shall place the records ordered sealed by the Court in a special file, appropriately and securely indexed in order to protect its confidentiality, subject to being opened on further order of the Court only upon the showing of compelling need. A request for access to such sealed records may be made ex parte. However, unless otherwise ordered by the Court, the Clerk shall reply in response to inquiries concerning the existence of arrest records which may have been sealed pursuant to this Rule that no records are available.

(i) Appeal. An aggrieved party may note an appeal from a final order entered pursuant to this Rule in accordance with Rule 4(II)(b)(1) of the General Rules of the District of Columbia Court of Appeals.

Rule 119. Custody of property and exhibits in criminal cases.

(a) Prior to verdict. The prosecutor, the attorney for the defendant, or a defendant when acting pro se in a criminal proceeding shall retain its exhibits and property until they are marked for identification and received in evidence. All such property and exhibits shall thereafter be retained by the Clerk until verdict, except that exhibits consisting of weapons, money, controlled substances, or articles of high monetary value shall be retained by the parties during adjournments.

(b) After verdict. In cases in which a verdict of not guilty or a judgment of acquittal is entered or a mistrial declared, each party shall immediately retake its exhibits from the Clerk unless otherwise ordered by the Court. In cases in which a verdict of guilty is entered, the Clerk shall retain all exhibits, except exhibits consisting of controlled substances, weapons, money, or articles of high

monetary value, which shall be transmitted by the Clerk to the parties, who shall receipt for them. Exhibits offered by a party which are large and unwieldy, such as diagrams, models, physical displays, etc., shall also be so transmitted unless otherwise ordered by the Court.

If no appeal is perfected, each party shall retake its exhibits from the Clerk 90 days after the date of final disposition of the case in this Court. If an appeal is perfected, each party shall retake its exhibits from the clerk 30 days after final disposition of the case by the appellate court.

(c) Preservation of exhibits. The parties shall preserve and maintain in custody all exhibits so transmitted to them for the periods of time specified in paragraph (b) of this rule.

(d) Destruction of exhibits. If any party, having received notice from the Clerk to retake its exhibits as provided in paragraph (b) of this rule, fails to do so within 30 days of the date of such notice, the Clerk may destroy or otherwise dispose of those exhibits.

Rule 120. Procedures for mental examination of defendants.

(1) When a motion for mental examination is made or if the Court is of the view that such an examination may be appropriate, the Court may order a mental competence screening examination to be conducted by the Department of Mental Health, Legal Services Division (LSD), at the courthouse or on an outpatient basis. In the case of a courthouse screening, if the examination report is not returned the same day it is ordered, the Court shall address the issue of detention or release pursuant to the Bail Reform Act, *D.C. Code §§ 23-1321*, et seq.

(2) The Court shall determine, based on the report of any screening examination and on any other relevant information, whether to order a full competence examination pursuant to *D.C. Code § 24-501(a)* and whether any such examination shall be done in an inpatient hospital setting or on an outpatient basis. If the Court commits a defendant to the Department of Mental Health as an inpatient for mental observation, a return date shall be set no sooner than thirty (30) nor more than forty-five (45) days from the date the examination is ordered. If a defendant is ordered so committed, and the Department of Mental Health has on the day of the order of commitment sufficient available bed space to accommodate the defendant, the Court shall defer setting conditions of release until after it has received the report of the Department of Mental Health. If bed space is not available on the day of the order of commitment, the Court shall address the issue of detention or release pursuant to the *D.C. Code § 23-1321* et seq. If the screening report recommends emergency hospitalization, and the Court determines that it is warranted, the Court may order the defendant's emergency hospitalization pursuant to *D.C. Code § 24-501(a)*. If the Court orders an outpatient examination for a defendant who is detained at the D.C. Jail, the Court shall set a return date not more than thirty (30) days from the date of the examination order. If the Court orders an outpatient examination for a defendant who is released pending trial, it shall set a return date not more than forty-five (45) days from the date of the order.

(3) As soon as the Department of Mental Health reaches a determination regarding the defendant's competence to stand trial, it shall forward its report to the Court and counsel. For defendants being held at the D.C. Jail or at a hospital, if the Clerk's Office of the Criminal Division receives a written report from the Department of Mental Health more than one court day prior to the scheduled

return date, and if the report states that the defendant is competent to stand trial, the Clerk shall cause the defendant to be brought before the appropriate judge on the court day next following receipt of the report. A new Pre-trial Services Agency report shall also be made available. If the report received by the Clerk's Office states that the defendant is incompetent to stand trial, the Clerk shall cause the defendant to be brought before the appropriate judge within seven days from receipt of the report or on the original return date, whichever is earlier. In any case, the report shall be sufficient for the Court to make a finding as to whether the defendant is competent to stand trial, unless either party objects, in which case the Court shall hold a prompt hearing. The Court may grant a continuance of the hearing if requested in order to permit examination by an independent expert. If, based upon the report or testimony at the hearing, the Court determines the defendant is competent, it shall determine the defendant's eligibility for release pursuant to *D.C. Code § 23-1321* et. seq., if it has not done so previously. If the Court determines that the defendant is incompetent for trial, the Court shall remand the defendant to the Department of Mental Health for care and treatment and further examination, in accordance with *D.C. Code § 24-501*, and shall set an appropriate return date, not to exceed sixty (60) days.

Form 1. Order imposing conditions of probation.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

UNITED STATES OF AMERICA)
v.) Case No.
) PDID No.
.....)

ORDER IMPOSING CONDITIONS OF PROBATION

The Court having entered a judgment of conviction and having imposed sentence as recorded in the judgment and probation order dated ....., it is hereby

FURTHER ORDERED that the defendant, when released on probation, observe the following conditions:

I GENERAL CONDITIONS

1. Obey all laws, ordinances and regulations.

2. Keep all appointments with your probation officer.

3. Notify the probation officer of any change of address within 48 hours and obtain permission of the probation officer if you plan to leave the Washington metropolitan area for more than 2 weeks. (The Washington metropolitan area is limited to Washington, D.C., Arlington County, Fairfax County, Montgomery County and Prince Georges County.)

4. Abstain from the use of hallucinatory or other illegal drugs.

II SPECIAL TERMS AND CONDITIONS

..... Obtain a job as soon as possible or continue employment with your present employer.

..... Apply for or attend the following educational, vocational, rehabilitation or job training program:

..... Cooperate with your probation officer in seeking and accepting medical, psychological or psychiatric treatment; in accordance with written notice given you by your probation officer.

..... Treatment for drug dependency or abuse in accordance with the following plan:

..... Treatment for alcohol problems in accordance with the following plan:

..... Do not drive a motor vehicle until the following date:

..... Make restitution of $ ..... in accordance with the following terms of payment:

..... Pay fine of $ ..... to the Finance Office of the District of Columbia Superior Court by cash or money order payable to the Superior Court of the District of Columbia under the following terms:

..... Observe the following conditions:

This probation order has been explained to me and I understand and accept its conditions. In addition, I understand that if the terms and conditions of their order are not complied with, the Court may, after notice and hearing, revoke the probation, and this may result in commitment to an institution.

Signature of Defendant

.....

Signature of U.S. Attorney

Corporation Counsel

Signature of Defendant's Attorney

Date: .....

Signature of Judge